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British Columbia Labour Relations Board

2000 Annual Report

BRITISH COLUMBIA

Ministry of Labour
Honourable Joan Smallwood, Minister

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LABOUR
RELATIONS
BOARD
BRITISH COLUMBIA

March 1, 2001

The Honourable Joan Smallwood
Minister of Labour
Parliament Buildings
Victoria, BC
V8X 1X4

Dear Ms. Minister:

Re: Annual Report

I am pleased to forward the 2000 Annual Report of the Labour Relations Board for the year ended December 31, 2000. This Report has been prepared for your review pursuant to Section 157(2) of the *Labour Relations Code*.

Yours truly,

LABOUR RELATIONS BOARD

Stephen Kelleher, Q.C.
Chair

SK/kb
Enclosure

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Chair's Message

This has been an eventful twelve months for the Board, and I believe we enter the new year ready to meet our responsibilities to the labour relations community and the general public.

Keith Oleksiuk's resignation as Chair took effect April 1, 2000. On behalf of the Board I wish him well and thank him for his service to the labour relations community. Former Chair Stan Lanyon again assumed the Chair, on a temporary basis. As he has in the past, Stan put his personal interests aside to meet the needs of the labour relations community and his efforts in guiding the Board through the transition period have been much appreciated. I was appointed Chair on October 11, 2000 , for a five-year term, serving on a part-time basis. At the time of my appointment I made it clear that should the government wish to appoint a full-time Chair during my term, I would be pleased to cooperate fully.

For much of the last two years the Board has lacked a full complement of Vice Chairs. This has placed a burden on the Vice Chairs who have been serving and has led to increased delay and a growing backlog. As we face the new year, we can anticipate that a full complement of Vice Chairs will enable us to make inroads into the backlog.

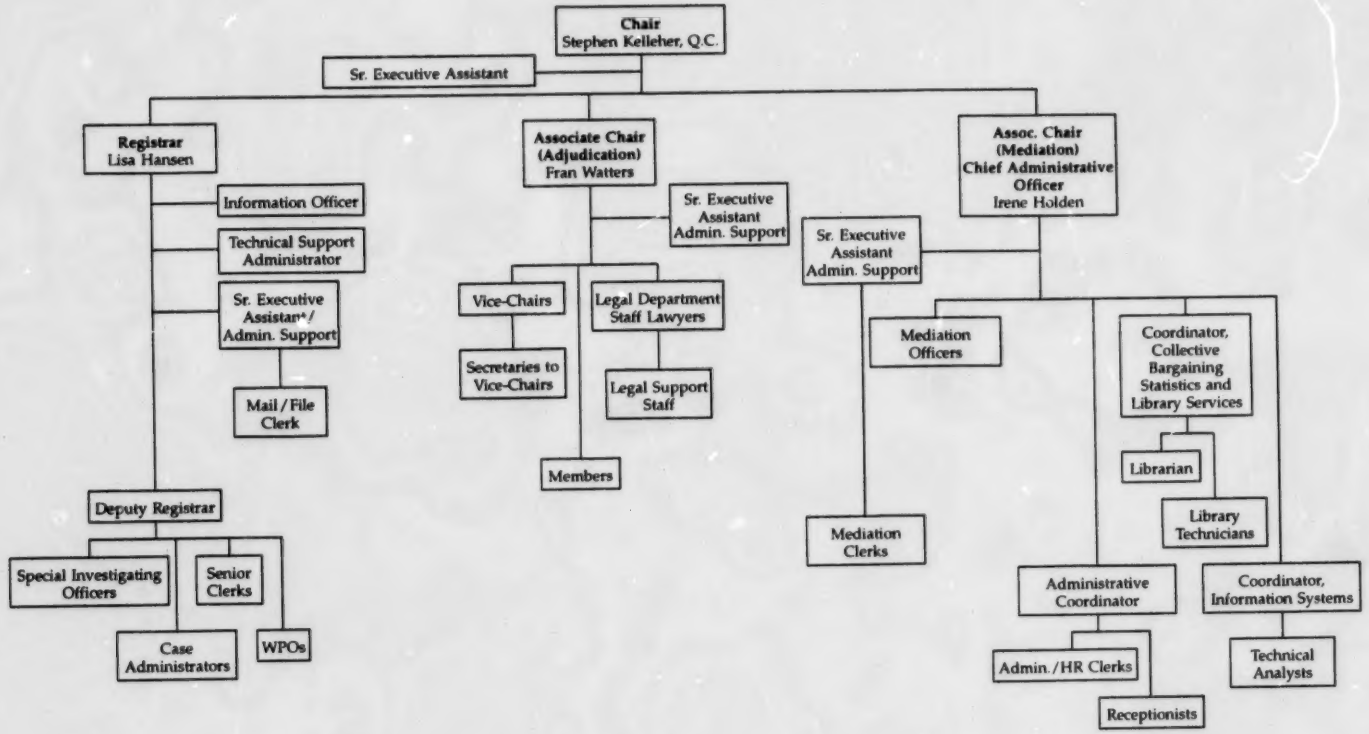
We also face the new year with much-needed stability. The confirmation, in October, of Irene Holden as Associate Chair (Mediation) and the reappointment of Lisa Hansen as Registrar, along with continuation of Fran Watters as Associate Chair (Adjudication) ensures that we have a strong and united team of officers, along with a full roster of part-time Members, to help ensure the Board is able to fulfill its mandate.

When I returned to the Board this year, after an absence of sixteen years, I was struck by the continued strong morale among Board staff. We are well served in every aspect of our work by an experienced and highly capable staff, many of whom have served the Board for fifteen or twenty years or longer.

An exciting development during the past year was the expansion and improvement of the Board's web site which was first created in the fall of 1999. Over the last few years we have made available written information on a variety of subjects to assist individuals, unions and employers with respect to their rights and responsibilities under the *Labour Relations Code*. The most recent publication is *Questions and Answers for Employees Regarding the Union Certification Process*. The addition of the web site (www.lrb.bc.ca) and increased awareness of its existence, makes the Board instantly accessible to the many people who have access to the Internet. In addition to the Code, Board Rules and Information Bulletins, the web site is now the principal source for Board Decisions, which are posted weekly. Once we have completed revision of the Practice Manual, next spring, the full range of Board Information Bulletins will be available on the web site.

In the year ahead, the Board will continue to look for ways to resolve disputes between management and labour fairly and effectively, and to try to streamline our procedures so as to deal with applications as quickly as possible. I am sure we will have the full co-operation of the labour relations community in these endeavours.

Labour Relations Board
Organizational Chart
January 2001



I.
The Board

I. The Board

A. GENERAL OVERVIEW

The *Labour Relations Code* (the "Code") establishes the Labour Relations Board. The statute grants the Board exclusive jurisdiction to hear and determine applications and complaints under the Code and to make orders under the Code that it deems appropriate.

The Code governs all aspects of collective bargaining amongst the provincially-regulated employers and employees to whom the Code applies. This includes the acquisition of collective bargaining rights, the process of collective bargaining, the settlement and regulation of disputes in both the public and private sectors, and the regulation of the representation of persons by their bargaining agents. In addition to administering and enforcing the Code, the Board is charged with responsibility in labour relations matters under several other statutes — see Table B in the Appendix to this Report.

In carrying out its mandate, the Board must at all times have regard to the purposes and objects of the Code. These are set out in Section 2 (1):

2. (1) The following are the purposes of this Code:
   (a) to encourage the practice and procedure of collective bargaining between employers and trade unions as the freely chosen representatives of employees;
   (b) to encourage co-operative participation between employers and trade unions in resolving workplace issues, adapting to changes in the economy, developing work force skills and promoting workplace productivity;
   (c) to minimize the effects of labour disputes on persons who are not involved in the dispute;
   (d) to promote conditions favourable to the orderly, constructive and expeditious settlement of disputes between employers and trade unions;
   (e) to ensure that the public interest is protected during labour disputes;
   (f) to encourage the use of mediation as a dispute resolution mechanism.

In order to accomplish this expansive mandate, the Code establishes the Board's administrative structure. Section 115 (3) of the Code provides that the Board shall consist of a Chair, Vice Chairs, and as many other members, equal in number, representative of employers and employees respectively, as shall be considered necessary and appointed by the Lieutenant Governor in Council. The Chair is the head of the Board. Section 116 of the Code requires that there be two divisions of the Board — the Mediation Division and the Adjudication Division. The Chair designates one of the Vice Chairs to act as Registrar, one to act as Associate Chair of the Mediation Division and one to act as Associate Chair of the Adjudication Division. The Chair, along with the Associate Chair (Adjudication), establishes panels to proceed with applications or complaints under the Code. Panels may be composed of the Chair, Vice Chair(s), and members in accordance with Section 117 (4) of the Code.

B. OFFICE OF THE CHAIR

As head of the Board, the Chair has the ultimate responsibility to oversee the administration of the Board and the Code. The Associate Chairs of Mediation and Adjudication and the Registrar report directly to the Chair. The Chair may sit as a panel, either with or without Vice Chairs and/or other members. The Chair presides at all proceedings of the Board and on all panels of which the Chair is a member.

C. REGISTRY

Every application received by the Board, except those relating to mediation, is processed through the Registrar's office. Administration

and progress of each non-mediation case is overseen by the Registry until the matter is finally disposed of. Four case administrators, each dealing with a geographic area of the Province, are responsible for initiation of applications and the conduct of files.

Processing of all non-mediation applications through the Registry enables the Board to utilize computerized case monitoring/ management to achieve effective and speedy processing of cases.

The Registry processes applications on either an expedited or non-expedited basis. Legislated time frames, combined with established Board policies and procedures, result in approximately 51 percent of applications receiving expedited processing. Part 5 applications can require adjudication within 24 hours. Certain unfair labour practice complaints must be adjudicated within three days. Others such as certification and decertification applications are normally processed within approximately one week of receipt.

On certification and decertification applications, case administrators are responsible for completing all necessary procedures before files are forwarded to Adjudication for a hearing. This includes written notification to parties, initiation of investigations by Industrial Relations Officers (IROs) and requests for written submissions. Accordingly, administrative staff must be familiar with legal principles and Board case law and policies.

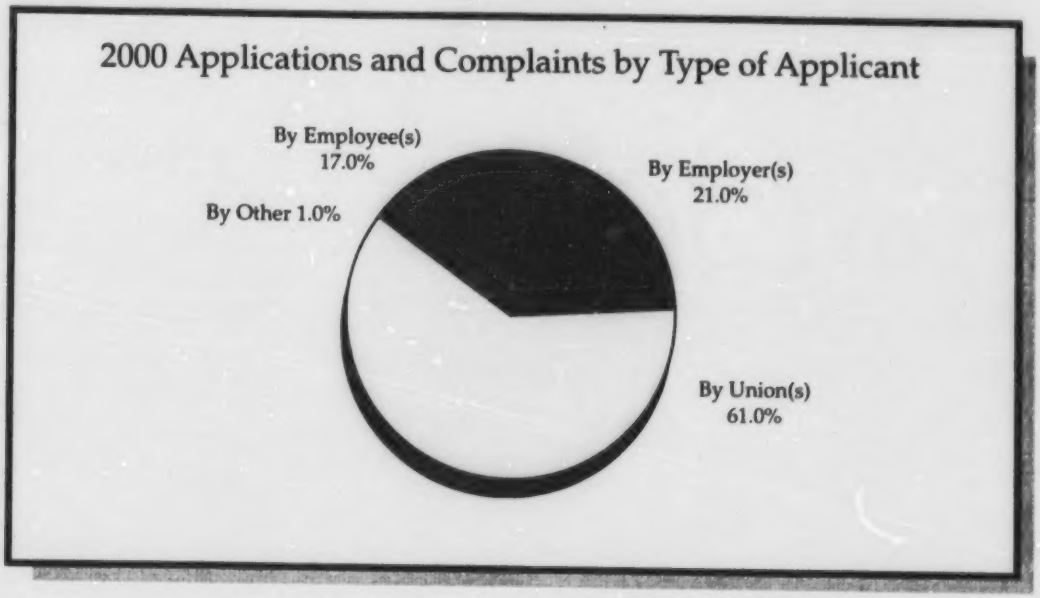
The Board continues to monitor its administrative procedures with the assistance of the Practice and Procedure Committee, comprised of practitioners in the labour relations committee. For some time concerns had been expressed about some aspects of the administration of the certification and decertification processes. The employer community had expressed concerns that increased verification of union membership evidence was necessary. Labour had expressed concerns about the validity of employee lists provided by employers to Industrial Relations Officers.

In response to these concerns, following extensive consultation with the labour relations community, the Board introduced, on a trial basis, a frequent "random audit" procedure to be carried out by Industrial Relations Officers when investigating applications for certification. (Subsequently, the procedure was extended to decertification applications.) With a regular frequency, not revealed to applicants, the Board assigns certain applications for audit. When an application is designated for audit the Industrial Relations Officer is required to take additional steps to check payroll records and, in some cases time cards. The union membership cards or revocation forms are checked for correct signatures by comparing to signatures on file with the employer such as TD 1 forms. The Officer is to advise the Board of any discrepancies found in the audit and to undertake any follow-up investigation directed by the Board.

For the period since implementation in September of 1999 until December 31, 2000, the Board directed audited investigations in 144 cases (118 applications for certification and 26 decertification applications). The audited investigations have involved a wide range of unions, industries and regions throughout British Columbia.

Since the introduction of the random audit in September 1999, employers and unions have cooperated fully in providing the required access for Industrial Relations Officers. Employers, unions and the legal community are commended for there support of the program. Industrial Relations Officers also deserve credit for embracing these additional responsibilities professionally and efficiently. To date, the random audit process has disclosed no evidence of fraudulent activity with respect to either membership cards or payroll records.

The audit procedure has had a positive impact on the Board's administration of the certification and decertification provisions of the Code. Where audits are performed, such cases tend to result in a more smoothly run hearing with less focus on issues about bargaining unit composition, signed membership cards, or signed revocation of bargaining rights forms. This procedure has had the intended effect of instilling more confidence in the Board's administration of these very sensitive areas of the Code.



Informal dispute resolution is an important part of the Board's operations and is used extensively during the processing of applications and complaints. Under the direction of the Deputy Registrar, cases requiring immediate informal dispute resolution are assigned to Special Investigating Officers (SIOs). The vast majority of their case load involves expedited matters such as unfair labour practice complaints, certifications, and Part 5 applications dealing with strikes, lockouts and picketing.

Assistance by SIOs through the informal process can be obtained by the parties or the adjudicator at any stage of proceedings, including case management meetings and after formal hearings have commenced.

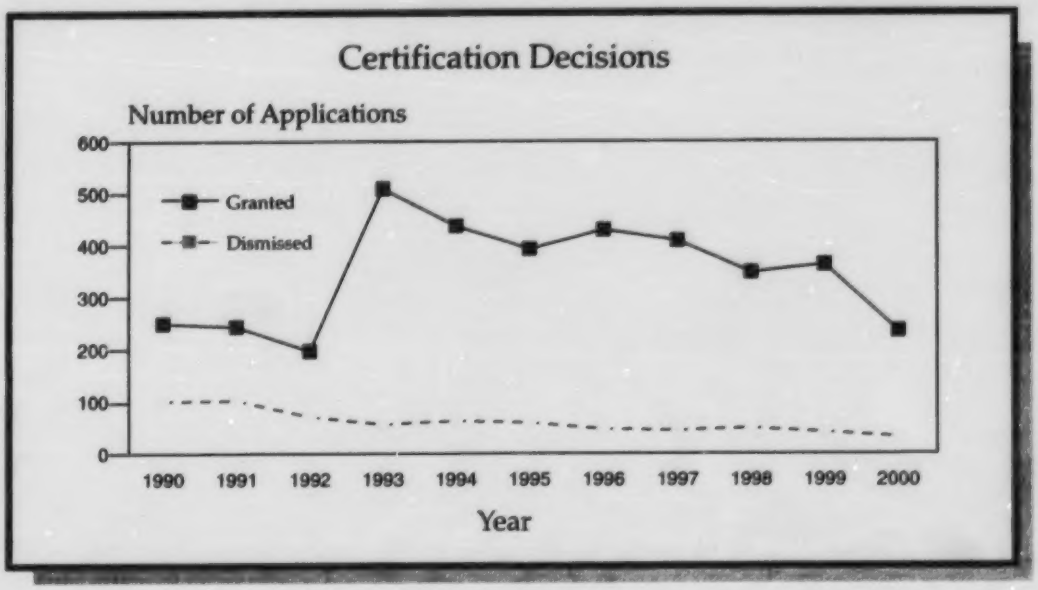
These informal settlement discussions are on a "without prejudice" basis. That is to say, a party cannot subsequently raise what was said in such discussions in any formal proceeding. However, settlement agreements reached on issues during the informal proceedings are binding on the parties and will be enforced by the Board.

The informal process achieves a very high success rate. As shown in Table 11 of the statistical tables, approximately 60 percent of unfair labour practice complaints and Part 5 complaints referred to officers are settled.

This informal dispute resolution process helps the Board and the parties make more effective use of resources and personnel, and substantially reduces the time needed to conclude cases, thus reducing expenditures. In addition, by fostering negotiated settlements between the parties, the process furthers the purposes of the Code by minimizing, where possible, decisions imposed by a third party.

Similar valuable services are provided throughout the Province by Industrial Relations Officers of the Employment Standards Branch of the Ministry of Labour. For example, every application for certification or decertification requires a report by an Industrial Relations Officer. Such reports are public, with only names and numbers remaining confidential to the Board.

Both SIOs and Industrial Relations Officers (IROs) also provide considerable assistance through written reports which may involve fact finding, narrowing the issues to be adjudicated, and interviewing individual employees and employers on a wide variety of issues. In 1998 the Board initiated a joint program with the Employment Standards Branch which brings IROs to the Board for a three month program working with the SIOs. This broadens the experience of the IROs and benefits both the community and the IRO.



In addition to administering the Registry, the Registrar, as a Vice Chair of the Board, may chair or sit as a member of an adjudication panel, and as a sole panel member, may dispose of certain applications where summary disposition is appropriate. This leads to the speedy disposition of many types of applications.

The Deputy Registrar has responsibility for administering the informal process and also deals with Section 12, duty of fair representation applications, most of which require additional information before the Registry can process them. In 2000, 84 letters were sent seeking additional information before processing Section 12 Applications.

In accordance with Section 122 (3) of the Code, the Board appointed its first Information Officer, effective February 1, 1994. His responsibilities to date have encompassed two main areas: handling incoming inquiry calls, and preparing written material for the public and the labour relations community.

The Information Officer deals with between 30 and 40 calls per day, from employers, unions, individual employees and media representatives.

The Board's publications include an *Employer's Guide to the Union Certification Process*. This plain language guide is sent to employers along with the Notice of Certification Application, to clarify their rights and responsibilities under the Code. The Guide is also available in French, Chinese and Punjabi translations. The day after the Notice and Guide are sent to employers, the Information Officer sends a letter to employers who have not previously been certified, offering to answer any questions about the Code or certification procedures before the hearing date or on the morning of the certification hearing.

A companion publication, *Questions and Answers for Employees Regarding the Union Certification Process*, has been developed following an extensive consultation process with the labour relations community. It provides information to employees in plain language concerning the certification process. And is also available in French, Chinese and Punjabi.

Another publication prepared by the Information Officer, the Board's Practice Manual has now been in use since April, 1995. An updated version of the Manual will be available in 2001.

The Board's web site was officially launched in late 1999. The site includes information concerning the Board's processes, hearing schedules and recent Board decisions. The site is a work-in-progress and the Board welcomes

input from the public to help improve the information provided. The web site address is www.lrb.bc.ca.

D. ADJUDICATION DIVISION

The Adjudication Division is responsible for hearing and deciding applications brought under the *Labour Relations Code*. The Division also attempts wherever possible to settle disputes without formal adjudication through case management and alternative dispute resolution.

Issues requiring adjudication include applications for the acquisition and termination of bargaining rights; unfair labour practice complaints; duty of fair representation complaints by individual employees; common and successor employer applications; reviews of arbitration awards; complaints respecting strikes, lockouts, picketing and other conduct regulated by Part 5 of the Code, including the replacement worker provision; and applications for reconsideration of Board decisions.

A major portion of the Division's workload continues to be the adjudication of expedited applications (including certifications, unfair labour practice complaints and Part 5 applications). During 2000, expedited applications comprised about 62.7% of cases received in the Board's major adjudication areas.

Since proclamation of the current Code in 1993 there has only been a slight decrease in the number of applications received by the Board. A comparison for recent calendar years of cases assigned for adjudication and adjudicated is set out in the accompanying table. The Board suffered a significant reduction in the ranks of the vice-chairs in 2000 and there was considerable delay in having the vacancies filled. The result was that even though the number of incoming applications in 2000 was less than the year before, the backlog of outstanding files increased.

There has also been an increase since 1993 in the number of decisions published by the Adjudication Division. During each of the calendar years 1990 to 1992, the Industrial Relations Council issued between 240 and 250 formal decisions. Since 1993, the Board has published an average of 483 decisions each year. The total in 2000 was 508 decisions (summaries of key cases are found elsewhere in this Report).

Although the Board was short as many as four adjudicators for much of the year, by the end of the year there were 12 full-time and two part-time vice-chairs in place. There were also 44 part-time members, representing either employers or employees, for assignment to hearing panels.

Legal services to the Adjudication Division were provided by a staff of six full-time lawyers. One of the full-time lawyers serves as the senior staff lawyer. The lawyers provide a wide range of support to the Board, including legal research, attending hearings, maintaining precedents and other resources, and representing the Board's interests in judicial review proceedings before the courts.

	1993	1994	1995	1996	1997	1998	1999	2000
Applications Assigned for Adjudication	1687	1660	1561	1498	1545	1584	1603	1365
Applications Adjudicated	1667	1612	1624	1414	1569	1562	1628	1404
Applications Outstanding at Year End	267	315	235	306	369	435	410	371

E. MEDIATION DIVISION

The Mediation Division offers assistance in collective bargaining, facilitation of joint sessions which enable employers and trade unions to improve their working relationship and collective bargaining information. These and other services are provided under the direction of the Associate Chair (Mediation).

Information about the services available from the Mediation Division can be obtained by telephone at (604) 660-9656 or via the Board's web site (www.lrb.bc.ca). This information includes various practice guidelines on the sections of the *Labour Relations Code* administered by the Mediation Division.

Collective Bargaining Mediation (Sections 55 and 74)

Collective bargaining mediation involves assistance to employers and unions to conclude the terms of first or renewal collective agreements. Mediators utilize a variety of techniques in efforts to assist the parties to reach mutual agreement. In certain cases, the mediator may issue recommendations for settlement.

The majority of mediation appointments are made under Section 74 of the Code and involve the renewal of existing collective agreements. A lesser number of first collective agreement mediator appointments are made under Section 55. In 2000, mediators were appointed to 202 cases under Section 74 and 31 cases under Section 55. Mediators were also involved in a further 44 cases which were carried over from previous years.

Essential Services (Section 72)

The mediation of essential services in certain public sector disputes is part of the mandate of the Mediation Division. In 2000, mediators were involved in mediating the establishment of essential service levels in disputes involving highway maintenance, municipalities, health and a couple of other areas.

Labour Management Consultation Committees (Section 53)

Section 53 of the Code requires employers and unions to establish joint consultation committees to promote the cooperative resolution of workplace issues. The Mediation Division offers assistance to employers and unions in meeting this obligation by providing advice on how to establish such committees and how to improve the effectiveness of existing committees.

First Collective Agreement Orientation

An employer or union involved in a first certification may request that a mediator be appointed to provide familiarization with the parties' rights and responsibilities with respect to concluding first collective agreements. The sessions generally take a few hours and are intended to provide an overview of what to expect in the collective bargaining process.

Relationship by Objectives Program

The Relationship by Objectives (RBO) program is designed to assist employers and unions who are mutually committed to improving the effectiveness of their ongoing relationship. The objective of the program is to create and foster a more positive climate at the workplace.

At the joint written request of an employer and a union, a mediator will be appointed to meet with the parties to confirm that they are committed to improving their relationship and that the RBO is the appropriate vehicle to utilize. During the course of exploratory meetings, the mediator may determine that an RBO is not appropriate and may suggest other means for the parties to address their relationship difficulties.

The formal RBO process generally involves a two-day working session away from the workplace involving key employer and union representatives. Through the use of open and candid discussion groups, the parties identify the problems affecting their relationship and develop concrete plans to achieve improvement.

The objective of the RBO seminar/workshop is for the parties to mutually agree upon a set of written action plans with specific goals, time frames for achieving the goals and assignment of specific individuals responsible for ensuring that the action plans are carried out.

A follow up session to review progress is usually scheduled between three to six months after the initial session. At this follow up session, the mediators offer assistance to the parties to revise and update the action plans.

Thirteen RBO's were conducted in the year 2000.

Grievance Mediation

Mediators often provide assistance to employers and unions to resolve grievances or other problems related to the operation of their collective agreement. Because of cost considerations, this assistance is generally only offered at the Board offices in Vancouver. A joint written request can be submitted to the Associate Chair (Mediation) to obtain grievance mediation assistance. In the year 2000, 34 requests were received. Each request often contained more than one grievance. The majority resulted in mediated settlements of the grievances.

Collective Bargaining Information System

The Mediation Division gathers and publishes information on collective bargaining and related labour relations matters. The Collective Bargaining Information System utilizes a costing model which measures total compensation, including the costs of both wage and benefit improvements. End rate costing is used to measure the level of the compensation changes at the end of each contract year.

The data contained in the Collective Bargaining Information System is available to interested parties on-line on a fee for service basis. Users can conduct customized searches of the data based on an industry sector, work performed, geographic location and length of the collective agreement. Interested parties may contact the Mediation Division for more information on the system and free demonstrations.

The Division also publishes the "Collective Bargaining Information Monthly Summary". This publication is available on a subscription basis and contains information on settlements and overall settlement trends by year on a private-public sector and industrial sector basis. The publication also contains labour market information compiled by Statistics Canada, lists of certifications and variances granted by the Labour Relations Board, and a list of arbitration awards received by the Collective Agreement Arbitration Bureau.

F. ADMINISTRATION

Information Systems

The Board has a HP9000 computer running a HP-UX operating system. The in-house applications running on the computer are written in PowerHouse and the information/data collected is stored in an Interbase database. The Board is also running Microsoft Windows NT Server 4.0 as a file and print server.

The principal computer applications contained on the in-house computers run in the following areas: case management, word processing, office automation and end user computing, statistical collection and distribution, library management and computer aided research.

Human Resources and Administration

The Human Resources and Administration group is responsible for handling personnel matters including payroll and benefit administration. The department also helps manage the Board's financial affairs (e.g., accounts payable/accounts receivable) and oversees maintenance of the Board's offices, including telephones, office equipment and security.

Office and Technical Support

All Board departments are ably assisted in the performance of their duties by various office and technical support staff. These include technical support persons, word processors, executive assistants, and administrative support personnel.

G. LIBRARY

The Labour Relations Board library is dedicated to serving the labour relations community in B.C. This modern facility houses an up-to-

date specialized collection in labour and employment law and is geared to provide assistance to the legal and labour relations communities and the public. As well, computers provide access to on-line catalogues and LRB databases.

The library is the sole depository for B.C. collective agreements which employers and unions are required to file with the Board. This collection totals 6,100 agreements. The library maintains printed lists of the agreements on file: one by union and one by employer. Patrons may phone the library to inquire about the availability of a collective agreement. In addition, patrons may visit the library to research the printed lists, and to make copies of the agreements themselves. Patrons outside the Lower Mainland may request photocopies of the agreements be mailed to them for a service charge.

During the period from January to December 2000 the usage of the library was 15 per cent by in-house personnel and 85 per cent by the public. In addition to day-to-day services (in person or by phone), library staff provide orientation tours for individuals and groups. In the period from January to December 2000, library staff handled approximately 4,700 information queries and welcomed 3,700 patrons.

II.
Board Members and Mediators

II. Board Members and Mediators

As of December 31, 2000, the Board consisted of the following members:

STEPHEN KELLEHER, Q.C., *Chair*

Stephen Kelleher has been a member of the British Columbia Bar since 1974. He was engaged in the private practice of labour law until 1980. He served as Vice-Chair and then Chair of the Labour Relations Board until 1984. Since that time he has worked as an arbitrator and mediator in labour relations matters and commercial disputes in both the public and private sectors. He has served as an Industrial Inquiry Commissioner in various labour disputes. He served as Commissioner under the *Canada Labour Code* inquiring into hours of work for grain elevator agents in Western Canada. He served with Stan Lanyon, Q.C., as a two-person Construction Industry Review Panel studying construction industry labour relations issues and recommending legislative change for the Minister of Labour of British Columbia in 1997-1998. Mr. Kelleher accepted a part-time appointment as Chair on October 11, 2000. He also serves as a member of Canada's Public Service Staff Relations Board as well as the Yukon Public Service Staff Relations Board.

FRANCES R. WATTERS, *Associate Chair (Adjudication)*

Fran Watters obtained her Bachelor of Laws degree from the University of Victoria in 1983. She then clerked with the British Columbia Supreme Court for one year before she was hired by the Labour Relations Board as a staff lawyer. In 1988 she joined the Vancouver firm of Alexander, Holburn, Beaudin & Lang where she became a partner in 1992. While at Alexander, Holburn, Beaudin & Lang, Ms. Watters' professional practice focused on labour, employment and human rights law. Ms. Watters was appointed to her current post in July of 1998.

IRENE HOLDEN, *Associate Chair (Mediation)*

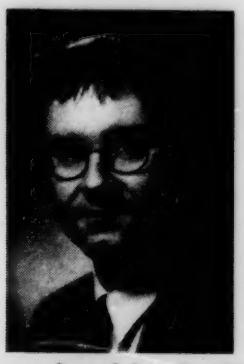
Irene Holden was appointed as Associate Chair (Mediation) in October of 2000, after acting in that capacity since December of 1999. Ms. Holden was a Mediator with the Board from 1992 until 1997, at which time she was appointed as a Vice Chair in the Adjudication Division, until her return to the Mediation Division as Associate Chair. Prior to coming to the Board in 1992, she was the Senior Labour Relations Officer at B.C. Hydro where she acted for the employer in all labour relations matters, including collective bargaining, and grievance/arbitration handling. Ms. Holden received her education in Nova Scotia, primarily at Acadia and Dalhousie Universities.

LISA HANSEN, *Registrar*

Lisa Hansen was appointed Registrar effective April 7, 1997. At the time of her appointment she was Executive Co-Director of the Health Sciences Association of B.C. HSA represents over 10,000 health care professionals in British Columbia. Prior to becoming Executive Co-Director in 1993, Ms. Hansen was Assistant Executive Director one year and Senior Labour Relations Officer for 12 years. She became active in HSA while working as a Registered Medical Laboratory Technologist. Ms. Hansen was a part-time Board Member from 1994 until her appointment as Registrar. On October 11, 2000, Ms. Hansen was reappointed to a further five-year term.

MARK J. BROWN, *Vice Chair*

Mark Brown was appointed to the Board as Vice Chair commencing February 1, 1996. Mark graduated from Ryerson in Toronto in 1977 with a Bachelor of Business Management Degree. He joined the Canadian Red Cross as an Administrator of one of its centers in Toronto. In 1981 he joined Versa Services Ltd. as its Industrial Relations Manager responsible for collective bargaining and labour relations for Canada. From 1985 to 1995 he was employed by the Health Employers Association of B.C., and one of its predecessor associations. As the Director of Consulting Services, he was responsible for collective bargaining, third party hearings and resource management for the community care sector. In 1995 he briefly held a similar position for the Community Social Services Employers' Association before joining the Board.



MICHAEL FLEMING, *Vice Chair*

Michael Fleming obtained a B.A. from Simon Fraser University in 1978 and worked with the Ministry of Human Resources as a social worker until 1983. He then worked for the Canadian Farmworkers Union appearing before a number of tribunals and courts on behalf of the members. He received a LL.B. in 1988 from the University of British Columbia and then articled and practised law with the firm of Rush, Crane & Guenther until 1990. From 1990 to his appointment to the Labour Relations Board as Vice Chair in 1997, he was employed by the BCGEU holding several positions and appearing before various tribunals and arbitrators on behalf of the Union and its members.

JOHN B. HALL, *Vice Chair*

John Hall obtained his Bachelor of Laws degree from the University of British Columbia in 1980. He then articled and became an associate with the Vancouver law firm of Alexander, Holburn, Beaudin & Lang where his professional practice was restricted to labour and employment law. Mr. Hall served as a Vice Chair of the Labour Relations Board from 1985 to 1987. He returned to his former firm where he became a partner in 1988. Mr. Hall continued his labour and employment law practice, with an increasing portion of his work being appointments as a neutral in unjust dismissal adjudications and labour arbitrations. He was appointed to the Board as Associate Chair (Adjudication) in 1992 and resigned effective May 31, 1998. He was reappointed as a part-time Vice Chair for a one-year term, commencing December 14, 1998 and reappointed to a further one-year term.

M. A. (Tony) HICKLING, *Vice Chair*

Tony Hickling taught labour law at the University of British Columbia from 1966 to 1969, and at the University of Western Ontario from 1969 to 1974 and at the University of British Columbia again from 1974 to 1999. In addition to his LL.B. and Ph.D. degrees, he received a LL.D. from the University of London in 1976. He has been very active as an arbitrator, as well as editing *Western Labour Arbitration Cases* and organizing arbitration seminars sponsored by the Continuing Legal Education Society. In addition to many articles on arbitration and labour law, he is author of "Citrine's Trade Union Law", 3rd edition, 1967 and "Labour Disputes and Unemployment Insurance Benefits in Canada and England", CCH Canadian, 1975. Tony advises that contrary to popular mythology, he has issued only one arbitration award 100 pages in length. He was appointed Vice Chair in September, 1999.

BARBARA JUNKER, *Vice Chair*

Barbara Junker graduated from the University of British Columbia in 1977 with a Bachelor of Commerce Degree. After graduation she worked at Vancouver Hospital and subsequently at Shaughnessy Hospital. In 1983, she joined the accredited bargaining agent for health care employers and was involved in consulting and managing health labour relations in B.C. Before her appointment to the Board, Ms. Junker was responsible for advising on and implementing plans to address strategic issues in health care, as well as planning and research on health labour relations and collective bargaining issues. Ms. Junker was appointed as a Vice Chair in 1994.

SHARON KEARNEY, *Vice Chair*

Sharon Kearney is a graduate of the University of British Columbia where she received a B.A. (Honours) in 1981 and an LL.B. in 1986. She articled in British Columbia and was called to the B.C. Bar in 1987. She practiced management side labour law with the firm of MacDonald Shier from 1987 to 1989. She then joined the Labour Relations Branch of the British Columbia Provincial Government, where she represented the interests of the Government as employer in grievance arbitrations, Labour Relations Board matters and collective bargaining. In 1993 Ms. Kearney joined Ladner Downs where she practised labour and administrative law representing employers in a wide range of matters. She has been a regular lecturer with the Human Resources Managers Association and has contributed articles for publication with the Continuing Legal Education Society of British Columbia. Ms. Kearney was appointed as a Vice Chair on December 14, 1998.

CATHERINE McCREARY, *Vice Chair*

Catherine McCreary received her LL.B. from the University of Calgary in 1983. From 1984 to 1997 she practiced labour law in Calgary with the firm of McGown Johnson acting mainly for unions and employees. In 1996 she was elected to the Board of Directors of First Calgary Savings and Credit Union. In 1997 Ms. McCreary moved to Vancouver where she accepted the position of in-house counsel to Teamsters Local 213. In 1999 she was elected to the Board of Directors of VanCity Savings and Credit Union. On October 11, 2000 Ms. McCreary was appointed a Vice Chair of the Labour Relations Board.

GREG MULLALY, *Vice Chair*

Greg Mullaly took degrees in philosophy at Dalhousie University (B.A. (Hons.), 1975) and the University of Oxford (B. Phil., 1978) before returning to Dalhousie University to study law. He received an LL.B. in 1981 and then practiced labour law for nineteen years, most recently at Victory Square Law Office. Mr. Mullaly was appointed to the Labour Relations Board in June, 2000.

JAN O'BRIEN, *Vice Chair*

Ms. O'Brien was a Member of the Labour Relations Board for nine years before her appointment as Vice Chair in June 2000. She was co-ordinator of the Capilano College Labour Students Program for two years. She is past President of Local 115-M of the Communications, Energy and Paperworkers Union and was Administrative Officer of its predecessor, the Vancouver Newspaper Guild. During her 10 years with the union, Ms. O'Brien headed several sets of collective bargaining and led organizing drives. She was a Vice-President of the B.C. Federation of Labour, where she chaired the Women's Rights Committee. She is a former newspaper reporter and a graduate of the University of British Columbia. Ms. O'Brien attended the Harvard University Trade Union Program and is currently working on her MBA at Simon Fraser University.

LAURA PARKINSON, *Vice Chair*

Laura Parkinson received her LL.B. from the University of British Columbia in 1983 and her LL.M. in Labour Law and Constitutional Law from Queen's University in 1986. Ms. Parkinson served as a Staff Lawyer with the Labour Relations Board in 1986 and 1987. She then returned to the law firm of Baigent, Jackson, Blair where she had previously practised, and remained with that firm and its successor, Victory Square Law Office, until her appointment as a Vice Chair on August 1, 1995.

ROBERT PEKELES, *Vice Chair*

Robert Pekeles obtained his LL.B. from the University of Toronto in 1983. After articling with the law firm Swinton & Company he was called to the Bar in 1984. He served as a staff lawyer with the Labour Relations Board from 1984 to early 1986. Subsequently, he practised labour law with Rankin & Company where he acted for trade unions in various sectors including construction, mining, trucking, office and municipal. From 1989 until his appointment to the Labour Relations Board as a Vice Chair in 1994, he was legal counsel for the International Union of Operating Engineers, Local 115.

VLADIMIR (WALTER) PYLYPCHUK, *Vice Chair*

Walter Pylypchuk received his law degree from the University of Western Ontario and was called to the Bar of Ontario in 1978 and the Bar of British Columbia in 1991. He was in private practice from 1978 to 1980, and then joined the Federal Department of Justice for two years during which time he was seconded to Canada Post Corporation. From 1983 to 1989 Mr. Pylypchuk practised as in-house counsel for Canada Post. He served as a Vice Chair of the Industrial Relations Council from 1989 to 1992. After his term with the Council he joined Swinton & Company where he represented employers, associations and trade unions, until his appointment as a Vice Chair of the Labour Relations Board on August 1, 1995.

KEN SAUNDERS, *Vice Chair*

Ken Saunders obtained a Bachelor of Arts degree from Simon Fraser University in 1987 and a Bachelor of Laws degree from the University of British Columbia in 1990. Following graduation, he acted as Assistant Director of the Hospitality Industrial Relations Employers' Association where he was responsible for grievance arbitration and Labour Relations Board matters. In 1996 he joined the Community Social Services Employers' Association until his appointment as a Vice Chair in October, 2000. At CSSEA he headed the Dispute Resolution and Research Services Department and acted on behalf of member agencies in Labour Relations Board, Employment Standards, Human Rights and collective agreement arbitration proceedings. On October 11, 2000, Mr. Saunders was appointed a Vice Chair of the Labour Relations Board.

GORD VAN DYCK, *Vice Chair*

Gord Van Dyck was appointed to the Board as Vice Chair on January 1, 1998. Mr. Van Dyck's background is comprised of almost equal measures of public sector, private sector, union and management experience. He was the Director of Labour Relations for the Workers' Compensation Board of B.C. from 1993 to 1998 and the Assistant Business Manager with Local 213 of the International Brotherhood of Electrical Workers responsible for adjudicative services from 1980 to 1993. His earlier experience includes seven years as the General Manager of Bowmac Transport Ltd., a 1992 appointment to the Labour Relations Board and four years as a part-time Commissioner with the Public Service Commission of B.C.

CARMELA ALLEVATO, *Employee Representative*

Carmela Allevato is in-house counsel for the Canadian Union of Public Employees. She served as Chief Administrative Officer of the Hospital Employees' Union for six years. She has extensive experience in advocacy and negotiations.

JOANNE ARNOLD, *Employer Representative*

Joanne Arnold has worked in the human resource/ labour relations field for over 20 years, with the majority of those years being spent in the health care industry. Prior to assuming her current position of Senior Vice President with the Health Employers Association of British Columbia, Ms. Arnold worked as the Executive Director of the Continuing Care Employee Relations Association, and held several positions in the human resources field in both the manufacturing and retail industries. Ms. Arnold is also an employer representative on the Board of the Healthcare Labour Adjustment Agency, an organization focused at reducing the impact of down-sizing in health care through the co-operative efforts of both employers and unions.

KEITH BENNETT, *Employer Representative*

Keith Bennett is a graduate of the University of British Columbia. He joined Forest Industrial Relations Limited in 1960 as labour relations assistant and statistician and became assistant manager in March 1969. In 1971 he was appointed manager, then became vice-president in August of 1973, and president in May of 1976, until his retirement in 1997. He was the chief spokesman for the B.C. Coast forest industry in negotiations with IWA Canada. Mr. Bennett is a past chairman of the Labour-Management Committee of the Vancouver Board of Trade, a past member of the Employer-Employee Relations Committee of the Canadian Chamber of Commerce, a past director and former president of the Medical Services Association of B.C. He was a member of the Executive Committee of the Conference Board of Canada, Industrial Relations Section.

MIKE BOCKING, *Employee Representative*

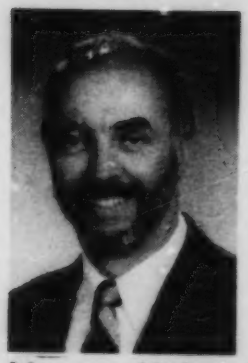
Mike Bocking is the President of Communication, Energy and Paperworkers Local 2000, also known as the Media Union of B.C. Mike has served in a variety of roles in Local 2000 representing about 2,300 workers primarily employed at newspapers and print shops. Before becoming President of Local 2000, Mike was a reporter assignment editor for the Vancouver Sun newspapers.

PAULA BODDIE, *Employer Representative*

Paula Boddie has worked in the human resources/labour relations field for over 15 years. She has held senior management positions in the federal and provincial sectors, most recently as Vice President of Human Resources at B.C. Transit. Ms. Boddie held a similar position at the Vancouver Port Corporation and at the Vancouver Stock Exchange. Ms. Boddie has extensive experience in labour relations, human resources, and with employment equity and human rights matters and legislation. Currently, Ms. Boddie is a practising consultant in the broad human resources field.

NEIL BRADBURY, *Employee Representative*

Neil Bradbury is a National Representative for the Canadian Union of Public Employees. Mr. Bradbury has been a member of the Board of Directors of the Medical Services Association since 1985, serving as Vice Chairman since 1989 as well as Chairman in 1993 and 1994. He is a past member of the Workers' Compensation Boards of Review and has held positions on the executives of CUPE Local 498, CUPE's Fraser Valley District Council, and the CUPE B.C. Executive Board. He has instructed courses for the Canadian Labour Congress, the B.C. Federation of Labour and CUPE's six-level program. He regularly represents employees and locals before tribunals.



VERN CARTER, *Employer Representative*

Vern Carter was first appointed as a Board Member in August 1992. He was reappointed in November, 2000. He is President of Interior Forest Labour Relations Association. He is responsible for the Association's overall operations, and acts as chief spokesperson in contract negotiations between Southern Interior forest companies and IWA-Canada. Prior to this role, he was Manager of Labour Relations Services for the Health Labour Relations Association of B.C. He has over 20 years human resources experience in the private and public sectors with extensive experience in labour relations, collective bargaining, mediation and arbitration.

RAJ CHOUHAN, *Employee Representative*

Raj Chouhan was appointed to the position of Board Member in August 1994. He was reappointed in November, 2000. He has many years of diversified experience in labour relations and administration. Since 1986, Mr. Chouhan has been working with the Hospital Employees' Union. He is currently Director of Organizing and Bargaining. He has held various positions, including advisor to the Workers' Compensation Board Sub-Committee, which was set up to draft health and safety regulations for the agricultural industry, and was a founding member of the B.C. Organization to Fight Racism, and President of the Canadian Farmworkers' Union.

JAYNIE CLARK, *Employee Representative*

Jaynie Clark has been a lay advocate in the labour relations field for over 13 years. She has been with BCGEU since 1989 and has worked in the North Peace, Lower Mainland and North Island area offices where she gained broad experience handling negotiations. Her background includes participating as lay counsel and as a Board member at various administrative tribunals. She is currently the Advocacy Coordinator responsible for the staff who perform legal research and prepare and present formal arbitration hearings, Labour Relations Board hearings, court matters and all levels of Workers' Compensation Board appeals. Ms. Clark is in her third term as an Employee Representative Member of the Labour Relations Board. Recently she has been elected as Vice-President of the British Columbia Industrial Relations Association and appointed a Lay Bencher of the Law Society of British Columbia. Prior to joining the BCGEU, Ms. Clark worked with the B.C. Federation of Labour.

DAVID COX, *Employer Representative*

David Cox has worked in the field of employee/labour relations in both the private and public sectors over the past 20 years. He is presently Assistant Vice-President of Industrial Relations of I.C.B.C. He held a number of senior positions which have included responsibility for general human resources, strategic planning, safety and labour relations. In the early 1990's he was Director, Corporate Labour Relations and Safety with B.C. Rail Ltd., and was responsible for all corporate labour relations and occupational health and safety initiatives.

ROGER CROWTHER, *Employee Representative*

Roger Crowther has over 32 years of diversified experience as a Union Representative in British Columbia; 25 years as a full-time representative. He is currently National Representative for the Canadian Auto Workers' Union specializing in first collective agreements. He is a former Regional Vice-President of CAIMAW. Mr. Crowther is active in a number of progressive community-based groups.

KAREN DEAN, *Employee Representative*

Karen Dean is Co-ordinator of Servicing for the Hospital Employees Union. She has been a full-time representative for the union since 1987 and, prior to assuming her current position, was Director of Education and Health and Safety. Previously Ms. Dean worked as an organizer for student and tenants rights groups, as a paralegal for the Canadian Farmworkers Union, and as a clerical worker for various unions.

MARIE DECAIRE, *Employee Representative*

Marie Decaire is the Secretary-Treasurer of the Hotel, Restaurant & Culinary Employees and Bartenders Union Local 40, where she has been a member for 20 years and a full-time representative since 1982. Ms. Decaire is an officer of the B.C. Federation of Labour Executive Council and also serves as a Trustee on various health care and pension funds. Ms. Decaire's experience includes grievance arbitration, trade union education, and training and contract negotiation.

RALPH ELKE, *Employer Representative*

Ralph Elke is President of R. Elke & Associates and has been involved in labour relations for the past thirty years. Prior to creating his own company, he held senior human resources positions in the mining, transportation and service industries including being responsible for employee relations at Expo 86. He has negotiated over 150 collective agreements in a variety of sectors and has particular expertise regarding the bargaining process as well as in the areas of dispute resolution and collective agreement administration.

ERICH EWERT, *Employee Representative*

Erich was appointed as a Board Member in September 1998. He was reappointed in November, 2000. He has a long history in industrial relations. He was the financial secretary of IWA Canada, Local 1-217 from 1980 to 1998. Prior to this, he was the first Vice-President of the Local Union from 1970 to 1980. Erich has served on both the Regional Council Executive Board and the National Executive Board of IWA Canada, as well as sitting on the Provincial Negotiating Committee. Other activities that Erich has been involved in are: Trustee of the IWA Forest Industry Long Term Disability Plan, Chair of the Lower Mainland Referral and Assessment Service, Director of the Vancouver Children's Foundation, and an advocate in presenting arbitration cases and workers compensation appeals.

CAROL GIBSON, *Employer Representative*

Carol Gibson has worked in the field of employee and labour relations, in both the public and private sectors, with the Hudson's Bay Company; the Open Learning Agency; and for the last eight years, as Vice President, Human Resources, with Rogers Cablesystems Limited. She holds a B.A. and M.A. in History from the University of British Columbia.

SHERIDA HARRIS, *Employer Representative*

Sherida Harris has been involved in labour relations activities for more than 20 years in both the private sector (Canadian Airlines) and the public sector (B.C. Public School Employers' Association). She has had experience in all facets of collective agreement administration and participated in collective bargaining, policy development and labour relations training. She has been active in dispute resolution on both ends of the spectrum — presenting arbitration cases and managing and facilitating a joint-training program of union and management officials in conflict resolution.

GEOFFREY HOWES, *Employer Representative*

Geoffrey Howes has 35 years of experience in the restaurant and hospitality industry. He has worked in virtually all aspects of the industry, from waiter to chef to owner. As Director of Operations for Toseki Entertainment Ltd. he is responsible for the day-to-day operation of three fine dining restaurants — Salmon House on the Hill, Aqua Riva and Horizons. He also has considerable experience in labour policy issues, as an executive member of the Coalition of B.C. Businesses and as the Vice-President of Government Affairs for the B.C. Restaurant and Food Services Association.

RONALD S. JACKSON, *Employee Representative*

Ron was appointed as a Board Member in September 1998. He was reappointed in November, 2000. He retired February 28, 1998 from District 250 of the International Association of Machinists and Aerospace Workers. A journeyman machinist by trade, at the time of his retirement, he had served for ten years as Directing Business Representative. In addition to leading his union during this period, Ron was a Vice-President of the B.C. and Yukon Territory Building and Construction Trades Council for ten years; served on the Executive Council of the B.C. Federation of Labour, and was a Trustee on various union committees, such as pension, health and welfare and apprenticeship. He was also a member of the B.C. Labour Force Development Board.

ERIC JANES, *Employer Representative*

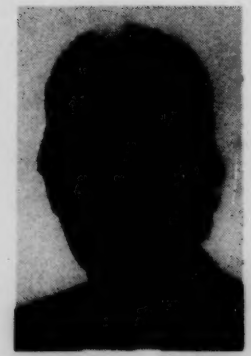
Eric Janes has extensive experience in all aspects of labour relations over the last 20 years and has been the Manager of Labour Relations, at B.C. Hydro from 1987 to 1997. He is currently the Manager of Call Centre Operations in Customer Services for B.C. Hydro. He is also an employer representative on the Joint Advisory Committee to the Collective Agreement Arbitration Bureau, pursuant to Section 83 of the Code.

D. KEVIN KELLY, *Employee Representative*

Kevin Kelly is past President of Kamloops Local 1-417 of the Industrial Wood and Allied Workers Canada. Prior to his election as President in 1983, he was the Financial Secretary for 14 years. Before being elected to a full-time position in 1969, he worked in logging, sawmill, plywood and the auto repair business. He is also a Trustee of several forest industry and union benefit plans.

MARK LEFFLER, *Employer Representative*

Mark Leffler is Manager, Human Resources and Labour Relations for the Greater Vancouver Regional District. In that capacity he is responsible for collective bargaining on behalf of 16 municipalities and the Regional District in a voluntary bargaining association. His department negotiates some 60 collective agreements covering more than 13,000 employees, including inside/outside employees, police, firefighters, nurses, museum and public library staff. The department also provides job evaluation, workers' compensation and employment equity services throughout the region. Mr. Leffler is a graduate of the University of British Columbia, and prior to joining the GVRD in early 1986, held a variety of labour relations and human resource management positions with Ontario Hydro, Liquid Carbonic Canada Ltd. and B.C. Hydro.



R. A. S. (BOB) MARCH, *Employer Representative*

Bob March has over 27 years experience in the personnel labour relations field with Commonwealth Construction. Mr. March's career with Commonwealth began as a Personnel Assistant, through Corporate Safety Officer to Manager of Industrial Relations. He was also General Manager of Highways Constructors Ltd. He has represented contractors on numerous boards and committees dealing with a wide variety of issues from labour disputes through to joint apprenticeship training committee functions. Mr. March is an active participant in the labour relations field, sitting on advisory boards for Health & Welfare plans as well as the Jurisdictional Assignment Plan.

GAIL MARTIN, *Employee Representative*

Gail Martin has worked for B.C. Telephone since 1967. For most of that time she has been involved with the Telecommunications Workers' Union as a Local Executive member. She has served on several joint committees with company representatives including contracting out and technological change, work jurisdiction and job sharing. Since 1995 she has worked full-time for the TWU. She is also active in her community. In 1990 she was a candidate for Councillor in Delta, currently serves on the Delta Police Board, and is an executive member of the Canadian Association of Police Boards. She is married with two adult children.

RON McEACHERN, *Employer Representative*

Ron McEachern is Deputy Commissioner of the Public Service Employee Relations Commission. In this capacity he is responsible for negotiating and administering collective agreements on behalf of the Provincial Government. His branch negotiates numerous master and component collective agreements covering more than 37,000 employees as well as various professional fee-for-service contracts. Currently, he is a member of the Board of Directors for the Health Employers Association of British Columbia. He has been with the Provincial Government since 1975 and has held various labour relations positions, including both Manager and Director of Labour Relations for the Commission. Mr. McEachern is a graduate of the University of Victoria, and prior to joining the public service, was employed in industrial relations with MacMillan Bloedel Ltd.

DONALD MONK, *Employer Representative*

Don Monk is a graduate of the University of British Columbia. He was Vice-President of Labour Relations for Canada Safeway Limited for approximately 17 years. Recently he stepped down as Vice-President and was on special assignment reporting to the Executive Vice-President of Labour Relations in California, and the President of Canada Safeway Limited.

MIRIAM OLNEY, *Employee Representative*

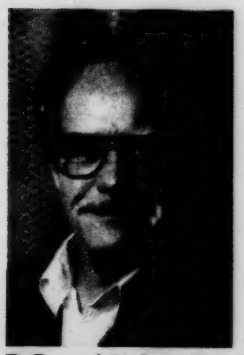
Miriam Olney is a graduate of U.B.C. and has recently retired from a 35-year career in the labour movement. Her last position was Director of Pensions and Benefits for the United Food and Commercial Workers Union. She also served 14 years as a member of the Executive Council of the B.C. Federation of Labour. Miriam sits on the Boards of the Insurance Corporation of B.C., the National Institute of Disability Management and Research, and the North Shore Crisis Services Society.

JOHN THOMAS ORR, *Employer Representative*

Tom has held the position of Board Member since August 1992. He was reappointed in November, 2000. He worked in the field of employee/labour relations with Cominco Ltd. for 25 years before retiring, effective January 2000. During his career with Cominco, he has held a number of senior positions retiring as Supervisor, Employee Relations at Cominco's Sullivan Mine operation. He has extensive experience in collective agreement administration, arbitration presentation, collective bargaining, organizational restructuring and pay and benefits administration. For the past four years he has worked closely with three United Steelworkers of America locals on employee transition activities in preparation for closure of the Sullivan Mine operation in year 2002.

WAYNE PALMER, *Employee Representative*

Wayne Palmer was working as a heavy equipment operator on highways in the Yukon Territory when he became President of the Yukon Local of the Public Service Alliance of Canada. He became a representative of the Teamsters Union in 1974 and was elected President of Teamsters Local 213 in 1981. Mr. Palmer retired in 1997. He was appointed to the Board in 1999.



CHARLIE PECK, *Employee Representative*

Charlie Peck is the Business Manager of the International Brotherhood of Electrical Workers, Local 213, and has been a member of the union since beginning work as an electrician apprentice in 1957. Charlie has served in a number of roles in his union, including Hiring Hall Dispatcher and Secretary-Treasurer. In addition to his duties as Local 213's Business Manager, he is currently Chair of the Provincial Council of Electrical Workers, President of the B.C. and Yukon Territories Building and Construction Trades Council, a Director of Concern Properties and Vice-President of the B.C. Federation of Labour.

DORIS PENNER, *Employer Representative*

Doris Penner has been a residential building contractor for over 18 years, owning her own company, Quiniscoe Homes Ltd. at Panorama, B.C. She is the immediate Past President of the Canadian Home Builders Association of B.C. and currently serves on the Board of the National Homebuilders Association. Doris currently serves on numerous boards and committees involved with maintaining the health of the residential construction industry. In the past she has served on the executive of both the Yukon and Whitehorse Chambers of Commerce, was the founding President of the Women's Business Network of Yukon, sat as a Director of the Yukon Energy Corporation and Yukon Development Corporation, as well as, different steering committees having to do with employment in the Yukon. Doris has her real estate sales license, is a residential housing professional, holds a commercial pilot's license and is an aircraft maintenance engineer.

PATRICE PRATT, *Employee Representative*

Patrice Pratt is the Director of Staff Development and Administration and Finance for the 60,000 member B.C. Government & Service Employees' Union. After being elected to various offices from 1969 with the Manitoba Government Employees' Union, she was subsequently hired as an Employee Relations Officer. She began working for the BCGEU in 1976 in a number of positions including Staff Representative in Kelowna and Assistant Director in Victoria and Vancouver, and then as province-wide Education Officer. Patrice has served on the B. C. Medical Services Foundation, the B.C. Hydro Board of Directors and as the President for the Canadian Association of Williams Syndrome. She presently sits on the Board of Directors for the Vancouver Foundation, the Beverage Container Management Board, and the Board of Governors of Simon Fraser University, and is the Chair of the United Way of the Lower Mainland. She is on the Executive Council of the B.C. Federation of Labour and serves on various Federation committees.

KAREN ROCKWELL, *Employee Representative*

Karen Rockwell is currently Vice-President of the Office and Professional Employees' International Union Local 378. Karen sits on the Canadian National Committee of her International union, is Chair of the Local's Education Committee and sits on the Local's Arbitration Review Panel. She has been a member of the Union's Collective Bargaining team since 1990. Karen has been employed with the Insurance Corporation of British Columbia since 1987 and works as a litigation adjuster at the ICBC office in Coquitlam.

KATHY SANDERSON, *Employer Representative*

Kathy Sanderson previously served the small business community of B.C. as the Chair of the Coalition of B.C. Businesses and as Director of Provincial Affairs for the Canadian Federation of Independent Business. Currently, Ms. Sanderson works as a consultant and in addition to serving on the Labour Relations Board also sits as a member of the B.C. Labour Force Development Board.

FRANZ SCHERUBL, *Employer Representative*

Franz Scherubl has worked in the labour relations field for close to 20 years. He is currently responsible for labour relations, human resources corporate governance and trade training at BC Gas Utility. He has a Bachelor of Commerce and Business Administration degree from the University of British Columbia and has also worked in mining, insurance and retail services.

RON SCHMIDT, *Employee Representative*

Ron Schmidt is Assistant to the Director of District 3 of the United Steelworkers of America, which encompasses the four western provinces and both Territories. He became active in his union in the early '70s as a Shop Steward and by 1975 was serving as Grievance Chairperson and Vice-President of this 2600-member Local in Trail, B.C. During 1975/76 he served as an organizer and in 1977 was appointed to the position of Staff Representative. In 1989 he became Area Supervisor of the Kootenays and B.C. interior. In June 1995 he was appointed to his current position. He has many years of experience in arbitration, negotiations and organizing and has held executive positions on labour councils and the B.C. Federation of Labour.

MAUREEN SHAW, *Employee Representative*

Maureen Shaw is an English instructor at Kwantlen University-College and has recently been elected to serve a second one-year term as President of the College Institute Educators' Association of B.C. Previously, she served three years as CIEA's Secretary-Treasurer. Maureen has been a long-time union activist, concerned about issues affecting non-regular faculty and women in post-secondary education. Her educational policy work at the provincial level has been extensive. She has researched, presented workshops and developed policy on a number of issues.

CATHY SMITH, *Employer Representative*

Cathy Smith is a graduate of the University of British Columbia with a Bachelor of Arts degree, Psychology major. After graduation she worked for the Bank of Montreal in several areas, including Card Services Division and Employee Relations. In 1985 she joined London Drugs Limited as the Director of Human Resources, overseeing all aspects of the Compensation and Benefits, Employee Relations, Administration, Training and Audio Visual functions. Over the past three years Cathy has worked as a consultant in the human resources field. Most recently she joined Mountain Equipment Co-Op, as their Human Resources Manager. Ms. Smith resigned from the Board in January 2001.

MARCIA SMITH, *Employer Representative*

Marcia Smith is the President and owner of Labrador Communications Ltd., a full-service public relations company located in Vancouver. She brings over 15 years of experience in the public policy and communications environments to a wide spectrum of clients in sectors including tourism, resources and construction. Ms. Smith is also active in the Coalition of BC Businesses, an organization which speaks for numerous employer associations on labour and employment policy implications for small and medium-sized businesses.

COLIN SNELL, *Employee Representative*

Colin Snell is the former President and Secretary Treasurer of the British Columbia Provincial Council of Carpenters. Prior to his election in 1985 to the Provincial Council, he was Business Agent of Carpenters' Vancouver Local Union 452 for 15 years. Mr. Snell has held Executive Council positions with the B.C. Federation of Labour, the B.C. and Yukon Territory Building and Construction Trades Council and the Vancouver and District Labour Council.

JOHN WEIR, *Employee Representative*

John Weir is the Assistant to the Secretary-Treasurer and Director of Organizing for the B.C. Federation of Labour. From 1972 to 1980, he was a member of Local 480 of the United Steelworkers of America in Trail, B.C., serving as Chief Shop Steward and Safety Committee Vice-Chair. He represented Trail and Kimberley Steelworkers in several rounds of contract negotiations and was Secretary of the Cominco Chain Bargaining Council in Western Canada. As Financial Secretary of Local 480 from 1980 to 1986, he was responsible for Workers' Compensation advocacy, rehabilitation, benefits and pensions. During this period, he served as labour member of the Unemployment Insurance Board of Referees. In 1986, John was appointed to the Workers' Compensation Review Board. He joined the B.C. Federation of Labour in 1987 as a Staff Director and has worked on a range of labour relations issues including human rights, occupational health and safety and Workers' Compensation. In 1991, John Weir was seconded to the Canadian Labour Congress to coordinate projects in South Africa and the Middle East, returning to the Federation a year later.

DUNCAN WILKINS, *Employer Representative*

Duncan Wilkins has worked in the employee/labour relations field for over 20 years. He had extensive experience in the mining and metals industry with Cominco Ltd., prior to a four year term at the Business Council of B.C., following which he has carried on a consulting practice in the areas of labour relations, human resources and general management.

GARRY WORTH, *Employee Representative*

Garry Worth is Past-President of the Pulp, Paper and Woodworkers of Canada (PPWC). He has been active in the PPWC and the Confederation of Canadian Unions since 1979. He was an active member of PPWC Local 10 in Kamloops, including six years as President. During that time he was involved in several sets of negotiations in the B.C. pulp and paper industry as PPWC caucus chair. Mr. Worth has also co-ordinated the certification and negotiation of first collective agreements with smaller groups of workers in the service industry. In addition, he has conducted union education and training seminars for local union shop stewards and executive members.

SUZY YUEN, *Employer Representative*

Suzy Yuen is currently the Director of Human Resources at the Four Seasons Hotel, Vancouver, a position she has held since 1991. After starting her hospitality career with Four Seasons Hotels in 1976, she worked in a number of positions before entering the human resources field in 1983. She has been involved in numerous negotiation committees over the years and serves as a Trustee for the GVHEA-Local 40 Health Care Plan.

As of December 31, 2000, the Board's mediation division consisted of the following mediators:

MARK ATKINSON, *Mediator*

Mark Atkinson has been involved with labour relations since 1981. He is a former Staff Representative and Director with the Hospital Employees' Union. His duties included education, negotiations, arbitration, general collective agreement administration and the co-ordination of essential services. Mark joined the Board as a mediator in 1995.

JIM BRECKENRIDGE, *Mediator*

Jim Breckenridge is a former Senior Conciliation Officer with the Federal Mediation and Conciliation Service of Labour Canada. He was with FMCS from 1980 to 1992 and in that capacity dealt with numerous collective bargaining disputes in British Columbia, Alberta, and both Territories. His prior experience includes five years with the Public Service Alliance of Canada as a Regional Representative negotiating a variety of collective agreements. His other experience includes ten years as a meteorological technician with the Federal Government. Jim has been a mediator with the Board since 1992.

DEBBIE CAMERON, *Mediator*

Debbie Cameron graduated from the Cariboo College Nursing program in 1976 and worked as a registered nurse for the next four years. In 1981 she was employed by the B.C. Nurses' Union, initially as a Labour Relations Officer, then as Negotiations Officer and in 1992 became the Co-ordinator of Hospitals and Organizing. As Hospitals Co-ordinator she was responsible for negotiations and contract administration of all hospital sector collective agreements, covering more than 17,000 employees. Debbie joined the Board as a mediator in 1994.

JIM KELLY, *Mediator*

Jim Kelly joined the Board in early 1992 following a long career in the union movement. After 13 years with Ford Motor Company, Mr. Kelly resigned his position at Ford and as Vice President of Local 707 United Automobile Workers and assumed a position with the Canadian Union of Public Employees as a National Representative, working for 15 years out of the Kelowna office. He has served on numerous arbitration boards and was responsible for administering a variety of collective agreements. Prior to joining the Board in 1992, Jim worked as a private mediator.

GRANT McARTHUR, *Mediator*

Grant McArthur graduated from the University of British Columbia in 1973. He worked for the Hospital Employees' Union for approximately five years. He then joined the Labour Relations Board as a Special Investigating Officer in 1980 and left to work for Canada Post in late 1984. Mr. McArthur joined B.C. Rail in 1986 where he worked in labour relations and as Manager of Personnel Services for three years prior to returning to the Board in 1992.

STEPHEN RINFRET, *Mediator*

Stephen Rinfret has worked in both labour relations and human resources in B.C. for over 20 years. Immediately prior to joining the Board, he was Director of Labour Relations Services for the Continuing Care Employee Relations Association (now HEABC). During this time, Mr. Rinfret also taught an undergraduate course in collective bargaining at Simon Fraser University, and a similar course at the British Columbia Institute of Technology. He holds a Bachelor of Science degree from the University of Montreal (Loyola College) and a Masters degree in Business Administration from Simon Fraser University. Stephen has been with the Board as a mediator since 1994.

BARBARA SHARP, *Mediator*

Barbara Sharp has been involved in labour relations since 1974. A former business agent for both the Workers' Compensation Board Employees' Union and the Office and Technical Employees' Union, Local 378, she assumed a wide variety of responsibilities including organizing, education, negotiations, job evaluation, and general collective agreement administration. She has been an instructor for the Canadian Labour Congress, member of the B.C. Federation of Labour Political Action Committee and the New Westminster Labour Council. She has chaired various union committees such as education, women's rights, and acted as representative in grievance arbitration. Barbara is currently on leave from the Board for a three-year term of office as Mayor of the City of North Vancouver.

III.
Highlights of Board Decisions

III. Highlights of Board Decisions

ACQUISITION AND TERMINATION OF BARGAINING RIGHTS

Certification — Appropriate Bargaining Unit

Sears Canada Inc., BCLRB No. B241/2000 — Reconsideration dismissed in BCLRB No. B449/2000 — The IBEW, Local 213 applied for a bargaining unit of on-site and shop Service Technicians and Service Technician Helpers at and from the Employer's parts and service department in Burnaby. The Employer objected to the appropriateness of the proposed unit arguing that at an administrative, physical and operational level, its parts and service department comprised an interdependent team process. The Panel found that while the evidence established the existence of many interdependent duties, there was only minimal and/or anomalous evidence of integrated work processes in the *IML* sense of overlapping and shared duties. Although the service technicians interacted with the parts administration staff, their involvement was illustrative of coordinated departmental functions rather than functional integration. Although the supply of parts was part of the Employer's "core enterprise," the inquiry undertaken in defining a unit is directed at an examination of the core duties of the employees in and out of the proposed unit, not at the relative importance of a particular function to the enterprise as a whole. The teamwork approach seen in the cooperation between the parts staff and service technicians is not the type of "continuous work process" relevant to a claim of functional integration. The type of continuous work process envisioned by *IML* is that whereby an end product is manufactured in sequential steps: e.g., an assembly line. *Held:* Union's application for certification granted.

Fleetwood Sausage, BCLRB No. B364/2000 — Application for leave for reconsideration pending — The IBEW, Local 213 applied to be certified for employees in the Employer's maintenance department. The Employer objected on the grounds that the unit applied for was inappropriate. The proposed unit represented 13 out of approximately 227 employees at the plant. The Employer argued that the proposed unit violated the policy in *IML* (BCLRB No. B308/93) that the Board will not select out a minority of classifications in a physically integrated plant. The Panel rejected the Employer's argument. The statement in IML regarding a minority of classifications was not intended as an additional factor to be considered in determining appropriateness. Rather, it was a statement made by the *IML* reconsideration panel in applying the standard community of interest test to the facts of the *Dueck* case. Consideration of the existence of a physically integrated plant falls within the factor of functional integration. The reference to "minority of classifications" also reflects a concern for the level of integration, and does not require an arithmetical approach to appropriateness. There is nothing in the Code that requires a certification to include either a certain number of people or a particular percentage of the total workforce. On the community of interest test, the unit applied for was appropriate. *Held:* Union's application for certification granted.

Coast Laundry & Linen Supply Co. Inc., BCLRB No. B156/2000 — The CAW applied for reconsideration of BCLRB No. B152/99 wherein the original panel dismissed its application for a second bargaining unit on the basis that the Union had failed to rebut the policy presumption against multiple bargaining units. A unit of drivers had been certified to a different union in 1998.

Even where the rationality of a proposed second unit is not in issue, an evidentiary inquiry into the first four *IML* factors may assist the Board in assessing the fifth and sixth factors. The parties should also bring evidence regarding the practice and history of both the employer's current bargaining scheme and col-

lective bargaining in the industry and sector, as well as the size of the employer, the number of existing units, private versus public sector status, and the incumbent union's efforts to organize and/or intentions regarding the employees in the proposed unit. The parties should also be prepared to address at this stage any proposals made by an applicant union for structuring its proposed unit so as to minimize any industrial instability arising from the existence of a second unit.

In the case at hand, the evidence regarding the first four *IML* factors was neutral. In the absence of evidence to the contrary, the recent certification of the drivers indicated that there was a real possibility that the existing unit might be expanded to include the employees in the proposed unit. The original panel's conclusion that the presumption against multiple units had not been overcome was consistent with the Code. *Held:* Leave granted; Union's application for reconsideration dismissed.

British Columbia Ferry Corporation, BCLRB No. B332/2000 — The Canadian Merchant Service Guild applied under Section 18 to represent 55 Masters and Senior Masters who were not included in an existing bargaining unit represented by the BCFMU.

The Panel found that a second unit was not appropriate. In addition to the six *IML* community of interest factors, the Panel considered the special characteristics of the Employer. Given that the Employer was a large public sector employer involving essential services, and there was an existing all employee unit, the Panel held that there must be compelling and persuasive reasons to grant a second unit. The potential for industrial instability caused by a second unit in an essential public service is a critical concern to the Board. *Held:* Guild's application for certification dismissed.

Certification — Membership Support

EBN Grainco Inc., BCLRB No. B400/2000 — The Teamsters, Local 31 applied for certification under Section 18 with sufficient membership support for automatic certification. The Employer opposed automatic certification on the ground that some of the membership cards were tainted as a result of Union misrepresentation. An inside organizer had represented to a number of employees that there would be some sort of meeting with the Union before any application for certification was filed. However, following the Employer's termination of the inside organizer, the organizer simply turned the cards over to the Union and the application was filed without a meeting being held. The panel concluded that some of the Union's membership cards were conditional as a number of the employees had signed in the belief that they would be consulted again before the Union applied for certification. The inside organizer's representation was ambiguous and, to the extent that it amounted to a misrepresentation, it was not deliberate as the organizer had genuinely intended to follow through with the promise at the time it was made.

In the circumstances, the panel concluded that it should exercise its discretion to order a representation vote under Section 24(1). As a condition of its order, the panel required the Union to hold a pre-vote meeting for the purpose of allowing employees to make inquiries of the Union. *Held:* Representation vote ordered.

Vertex Construction Services Ltd., BCLRB No. B344/2000 — IUOE, Local 115 applied for certification of its traditional craft unit. CLAC and the Employer opposed the application.

CLAC entered into a voluntary collective agreement with Ideal, a HMV subcontractor, in 1996. In July 1998, following a subcontracting arrangement between HMV and Vertex, the Ideal collective agreement was amended to substitute Vertex for Ideal. In August 1998, Local 115 applied for certification at Vertex. Vertex objected to the Local 115 application on the basis of its voluntary bargaining relationship with CLAC. In September 1998, CLAC filed an application for certification for an all-employee unit at Vertex.

In BCLRB No. B528/98, an original panel held that the CLAC application, as an application for an all-employee unit, should be processed first. In BCLRB No. B122/2000, a reconsideration panel overturned the original panel on the basis that Local 115's application was for an appropriate unit and was filed first in time

and thus should be determined first. The matter was remitted to the original panel.

On remittal, the original panel dismissed Vertex's argument that its voluntary recognition agreement with CLAC barred Local 115's application, as the agreement had never been ratified by the Vertex employees. A review of the membership evidence, however, disclosed that both Local 115 and CLAC had the support of more than 55% of the employees in the unit applied for by Local 115. All parties agreed that due to the changeover in workforce since 1998, a vote under Section 24(1) could not be used to resolve any reasonable doubt as to the employees' true wishes. The panel concluded that in the circumstances of the case, the membership evidence of Local 115 should be preferred. Relevant circumstances included: the fact that Local 115's cards had been signed in the context of an organizing drive; the absence of any organizing by CLAC prior to the filing of Local 115's application; the timing of the signing of some CLAC cards; the fact that the CLAC voluntary recognition had not been ratified; and the fact that some employees had signed Local 115 cards after having signed CLAC cards. *Held:* Local 115's application for certification granted.

Raid

BC Rail, BCLRB No. B417/2000 — Leave for Reconsideration denied in BCLRB No. B501/2000 — The IWA, Local 1-424 applied to represent maintenance of way employees at BC Rail. The employees were currently represented by CUTE 6, one of seven constituent members of the Council of Trade Unions at BC Rail.

The Panel reviewed previous Board decisions concerning the extent to which there may be raids on the Council's structure and observed that the question of partial raids on the Railway presents the familiar tension between employee free choice and appropriateness. The Panel determined the best compromise in the present case was a moratorium on partial raids until the Board completes its review of the current Council's structure. Aside from the potential impact on industrial stability, allowing a new member could seriously compromise the Board's ability to assess the effectiveness of recent constitutional amendments. The Panel rejected IWA's application to replace CUTE 6 and declared under Section 143 that any unit which does not include all unionized employees in the unit currently represented by the Council is not appropriate for collective bargaining at the Railway at this time. *Held:* IWA's application for certification dismissed.

Timothy Edward Bradley (Hope Traffic Control), BCLRB No. B434/2000 — The Labourers Local 1611 applied for certification pursuant to Section 19 of the Code for a group of employees currently represented by the IBEW. At issue was the timeliness of the Labourers' application.

The IBEW collective agreement was originally for the term of August 6, 1998 to January 24, 2000 and continued to be in effect on a year-to-year basis under Article 1.01. The Labourers argued that Article 1.01 established January 25, 2000 as the start date to be considered when determining the seventh and eighth month raid period under Section 19.1 of the Code. The IBEW argued that the year for the purpose of calculating a raiding period ran forward from the beginning of the collective agreement term and continued year-to-year based on that anniversary date, irrespective of the expiry date of the agreement. The Panel agreed with the latter approach and concluded the applicable raid period under the IBEW agreement was properly calculated by that agreement's commencement date of August 6 (see *CARA* and *Turner Distribution).* The Labourers' application for certification was therefore filed outside of the applicable raid period and was dismissed as untimely. *Held:* Labourers' application for certification dismissed.

Variance

Royal Diamond Casinos, BCLRB No. B21/2000 — The Employer sought reconsideration of BCLRB No. B376/98, an original decision in which CAW-Canada, Local 3000 successfully applied to vary an existing bargaining unit to include surveillance and security employees.

Where a union seeks to vary its existing bargaining unit to include additional employees thereby providing access to collective bargaining to the affected employees, the focus of the

appropriateness inquiry is on evidence that goes to the viability of collective bargaining for the amended unit. Earlier Board decisions (*St. Vincent's Hospital, Sun Rype,* and *B.C. Systems Corporation*) did not answer the question in this case. In the casino industry, a conflict of interest would exist between security and/or surveillance staff and other employees such that security and surveillance employees should have a separate bargaining unit of their own. The OLRB in *Windsor Casino Ltd.* granted separate bargaining units for security guards and surveillance employees consistent with Sections 6(6) and (7) of the OLRA. For the same reasons as set out in *Windsor,* there was sufficient potential concern about the viability of collective bargaining as a result of the conflict of interest to justify the exclusion of the surveillance staff from the existing bargaining unit. Given the nature of the industry, and the primary job function of the surveillance employees — which is to monitor gaming activities, including the activity of other employees, for the purpose of detecting illegal activity — an ongoing high degree of potential conflict existed. This concern was sufficient to overcome the *IML* preference for inclusion in a single unit. Given that the parties did not distinguish between the surveillance employees and security employees for the purposes of the application, both should be excluded from the existing bargaining unit. The Panel directed the parties to discuss how the decision was to be implemented given that the employees had been placed originally in the existing unit. *Held:* Employer's application for reconsideration granted.

Decertification — General

ETD Building Maintenance Ltd., BCLRB No. B370/2000 — The CAW applied for certification approximately eight months after cancellation of the Teamsters' certification. The CAW argued its application should be processed despite the 10-month time bar in Section 33(10) because, amongst other things, its proposed unit was not the same as that previously certified to the Teamsters. The Panel found the time bar in Section 33(10) is not restricted to applications for bargaining units that are identical to the decertified unit. The wording of Section 33(10) encompasses applications for units which are substantially the same as the previous unit, and necessarily captures applications for smaller bargaining units.

While the Board has discretion to relieve against the time bar, the exercise of that discretion must be in furtherance of the purposes and objectives of the Code. The primary purposes of Section 33(10) are to provide a recently decertified union an opportunity to address the employee concerns which caused decertification, and to provide the employees an opportunity to change their minds on reflection, while preventing a second union from using the decertification provisions to conduct a raid. The Teamsters had not abandoned efforts or failed to attempt to take steps to address employee concerns. The Teamsters had applied to recertify the same unit. Although it withdrew its application, the withdrawal was without reasons and without objection from the Employer. The CAW commenced its organizing campaign within days of the withdrawal of the Teamsters' application. The Panel was not persuaded that the purposes of the time bar had been met and it did not find any of the compelling circumstances which are necessary to lift the bar. *Held:* CAW's application for certification dismissed.

Decertification — Voting Constituency

Certain Employees of Aspen Trailer Company Ltd., BCLRB No. B368/2000 — The Steelworkers applied for reconsideration of BCLRB No. B334/2000, in which its objections to a decertification application were dismissed. The Union argued before the original panel that a number of employees who were about to be laid off with "little or no hope" of recall should not be allowed to cast ballots in the decertification vote. The Union argued that the Board should apply a "drop-down" principle analogous to the "build-up" principle applied in applications for certification. It argued that where a large number of employees in the unit face imminent layoff with little hope of recall, any representation vote should be postponed until after the layoff.

On reconsideration, the Panel confirmed that the test applied to determine voter constituency on decertification votes is the "sufficient continuing interest" test. In substance, the Union's

disagreement was with the application of this test by the original panel. Even if the Board did adopt a parallel principle to the build-up principle, the Board would still be required to determine whether individuals working at the time of the decertification application had a sufficient continuing interest. The original panel determined that the laid off employees had a sufficient continuing interest because they had recall rights and because they were directly affected by Section 54 discussions between the Union and the Employer. The original panel's approach was consistent with the Code and Board policy. *Held:* Union's application for reconsideration dismissed.

Bella Vue Guest Home (1988) Ltd., BCLRB No. B41/2000 — The Employer applied for reconsideration of BCLRB No. B253/99 in which the original panel determined that the challenged ballots of certain individuals would not be counted in a representation vote conducted pursuant to Section 33(2).

There is limited jurisprudence on the narrow issue of the application of the sufficient continuing interest test in the context of applications for revocation of bargaining rights. However, the Board's policy on the sufficient and continuing interest test on applications for certifications should apply here. The Board affirmed the approach set out in *Waldun Forest Products* which established that a number of factors should be reviewed. The original panel had properly reviewed the *Waldun* factors and, in particular, had correctly focused on the status of the employees at the time of the representation vote — the date of the event at issue (see *Stratford Electric*). The Panel found no basis for disturbing the findings of the original panel and ordered the representation vote to be counted. *Held:* Employer's application for reconsideration dismissed.

Decertification — Withdrawal

Certain Employees of Surerus Pipeline Inc., BCLRB No. B305/2000 — Certain Employees applied under Section 33(2) for cancellation of a certification held by IUOE, Local No. 115. They subsequently applied to withdraw that application on the basis that they had misjudged the size of the bargaining unit. The Union opposed the withdrawal on the basis of prejudice caused by loss of a time bar. It relied on authorities where withdrawals of raid applications had been refused.

The panel rejected the Union's argument that decertification and raid applications are "mirror" applications for the purposes of determining opposed withdrawal applications. With respect to an application to decertify under Section 33, time bars are only automatically imposed where there has been a refusal to cancel under Section 33(6) (Section 33(3)(c)) and are discretionary in only specified circumstances (i.e., following a failed vote) (Section 33(3)(b)). By contrast, failed raid applications trigger a mandatory time bar under Section 19(2) against further raids.

In the present case, no complaint had been filed under Section 14, nor was there any allegation of improper interference with employees wishes within the meaning of Section 33(6). Rather, the Union opposed the Section 33 application on the basis that the application lacked threshold support. Thus, even in the event the Union's position was sustained, there would be no vote and, accordingly, no basis for imposing a discretionary time bar under Section 33(3)(b). *Held:* Certain Employees' request for withdrawal granted.

CONTINUATION OF BARGAINING RIGHTS

Consolidation

Health Employers Association of British Columbia, BCLRB No. B439/2000 — HSA applied under Section 19.8 of the *Health Authorities Act* and Section 142 of the Code seeking a consolidated certification for the nurses bargaining unit in the health sector. Its application was prompted by the transfer under the *Act* of RPNs from the paramedical professionals bargaining unit to the nurses unit. There was no dispute that HSA was entitled to a certification where HSA RPNs were transferred to the nurses unit. However, HSA also sought to include in its consolidated certification employers for whom it held a paramedical professional certification, but did not represent

nurses, on the effective date of the *Act*. The HEABC, BCNU and the Subsector Association opposed the application. HEABC also argued that HSA should not be permitted to retain a paramedical professionals certification for those employers where HSA had represented only RPNs that had since transferred to the nurses unit.

In *HEU*, BCLRB No. B284/2000, a reconsideration panel specifically left open the question of whether Section 19.8(1) might enable a union that formerly represented employees transferred to another unit to secure a certification for the transferred employees. The panel concluded that the Board did have the discretion to issue a certification for such transferred employees and that there need not be employees in a bargaining unit at the time the *Act* came into force in order for it to do so.

The Board has discretion to issue the type of amendments sought by HSA and to issue more than one certification as a result of the combined operation of subparagraphs 19.8(1)(a) and (b) of the *Act*. Thus, HSA's certification for the nurses bargaining unit *may* include employers who did not employ HSA-represented RPNs on or about the effective date of the *Act;* and employers who only employed RPNs before that date *may* be removed from the HSA's paramedical professionals certification. However, the panel was unable to determine which employers should, in the present case, be listed on either of the HSA certifications. The panel gave the parties directions about resolving the matter and retained jurisdiction to make final determinations if necessary. *Held:* Respondents' preliminary objection to HSA's application dismissed; matter remitted to the parties for discussions; Board retained jurisdiction.

Successorship — Employer

Corporation of the District of Maple Ridge, BCLRB No. B481/2000 — Application for leave for reconsideration pending — CUPE, Local 622 applied under Section 35 for a declaration that RG Arenas was a successor employer to the District, after the District decided to replace its community arena. The District and RG Arenas entered into an agreement for the construction and operation of a new two-sheet ice arena. The arena previously operated by the District was closed. RG Arenas operated the new arena complex under the trademark name Planet Ice. The District argued that it continued to operate its business of providing a one-rink and dry floor surface for the use of its subsidized community user groups at one of the two rinks at Planet Ice, and therefore it had not transferred a business or part of it to RG Arenas. The Union argued that the operation of the facility was the part of the District's business that was transferred. It argued that a critical component of the District's and RG Arenas' agreement was the closure of the old arena, and that RG Arenas received an ongoing viable business. After reviewing the jurisprudence on successorship, particularly in the context of contracting out cases, the Panel concluded that, after the opening of Planet Ice, the District continued to operate the same business at a new location. Although it chose a different method of operation, it was still in the business of operating a facility. The District therefore did not transfer a part of its business to RG Arenas. *Held:* Union's successorship application dismissed.

Common Employer

Bayshore Steel Erectors Ltd. -and- PMC Builders and Developers Ltd., BCLRB No. B438/2000 — The Ironworkers, Local 97 applied under Section 38 for a declaration that Bayshore and PMC constitute a common employer. PMC opposed the application on the basis that there was neither common control or direction nor a labour relations purpose for the declaration. PMC was a non-union employer in the steel fabrication and installation business. Harvey Kleiber was the sole officer, director and shareholder of PMC. Bayshore was a union employer in the steel installation business. Len Kleiber, Harvey's brother, was sole principal of Bayshore. Harvey was not an officer, director or shareholder in Bayshore.

PMC was a mid-size company having its head office and most of its operations in Winnipeg. It began to perform work in B.C. in 1997 and had about 20 formal contracts in B.C. Bayshore was incorporated in 1998 and does small scale installation work. PMC sub-contracted work to Bayshore on two PMC contracts.

The panel concluded that PMC and Bayshore were under the common control and direction

of Harvey. However, there was no labour relations purpose for granting a common employer declaration. PMC was an established non-union company that had expanded into B.C. PMC began to operate in B.C. before Bayshore began to operate in B.C. The only work that Bayshore ever performed was as a subcontractor for PMC. Bayshore's ability to acquire and perform additional installation work was in question on the facts of the case. In the circumstances, it could not be said that, at the present time, PMC's operation posed a "real threat" to the Union's bargaining rights with Bayshore. The Union was free to make a fresh Section 38 application should future events give rise to a valid labour relations purpose. *Held:* Union's application for a common employer declaration dismissed.

Superior Poultry Processors Ltd. -and- Hallmark Poultry Processors Ltd. and United Poultry Co. Ltd., BCLRB No. B496/2000 — The UFCW, Local 1518 applied under Section 141 for reconsideration of BCLRB No. B413/2000 wherein its application for a common employer declaration was dismissed. UFCW argued, first, that the original panel erred in holding that common employer status is no longer a relevant consideration when determining the scope of permissible picketing under the Code; and, second, that the original panel had made palpable and overriding errors of fact.

The original panel relied on *Ocean Construction*, BCLRB No. B263/85, in concluding that the Code no longer permits a common employer application for the purposes of picketing at other corporate sites. The reconsideration panel affirmed that the Board had, in its decision in *Ocean Construction*, declined to adopt the "single enterprise" aspect of the American ally doctrine. As such, neither a common employer declaration nor the ally doctrine can be used to expand permissible picketing under the Code merely by virtue of a corporate relationship. However, neither the Code nor *Ocean Construction* preclude resort to Section 38 where struck work is being performed at another site of a common employer.

It is open to a union to assert that "the employer" in Section 65(4)(a) of the Code includes an entity which is part of a common employer with the struck entity, but only in circumstances where the former performs work, supplies goods or furnishes services that would otherwise be performed, supplied or furnished at the site of the labour dispute. If a union is entitled to a declaration under Section 38, it can picket at locations where struck work is performed for the benefit of the common employer (i.e., not merely at locations where work is performed for the benefit of the struck entity now declared to form part of the common employer). Section 65(8) does not provide protection where work is moved between related operations; rather that provision requires the Board to treat divisions or other parts of one employer as separate employers where these are "separate and distinct". Nor does the definition of "employer" set out in Section 65(4) preclude a common employer declaration for the purposes of Section 65(4)(a). In effect, the common employer becomes the "person" in Section 65(5) where the prerequisites for a common employer declaration are present.

UFCW was denied leave with respect to its allegation of evidentiary errors. However, the reconsideration panel concluded that evidence and argument important to the union's case regarding specific shipments of product (the Colonial shipments) were not considered in the original panel's analysis. In the circumstances, this oversight resulted in a breach of procedural fairness and natural justice. *Held:* Union's application for reconsideration allowed in part; applications remitted to original panel to consider common employer issue and the circumstances surrounding the Colonial shipments.

Successorship — Union

General Workers Union, Local 1, BCLRB No. B356/2000 — CLAC applied under Section 37 for transfer of bargaining rights from the GWU. CLAC had written a letter to GWU members indicating that, as part of the transfer of jurisdiction, CLAC agreed to assume various liabilities, including pension obligations. The B.C. Yukon Building Trades Council and the IUOE, Local 115, who opposed CLAC's application to transfer bargaining rights, sought prehearing production of various documents, including documents relating to the agreements by CLAC to assume certain liabilities of the GWU.

CLAC argued that Section 37 does not give the Board jurisdiction to deal with the transfer of assets and liabilities arising in the context of a transfer of jurisdiction between unions, and therefore, the demand for production of such documents should be refused. The Panel rejected this argument. Section 37 requires the Board to satisfy itself that members affected by the transfer have been provided an adequate opportunity to express their wishes. If they are misled or confused about the real terms of the transfer, it cannot be reasonably concluded that their true wishes have been reflected in a vote. Accordingly, the Panel ordered production of various documents relating to the terms of the agreements between CLAC and the GWU.

ARBITRATION

Review of Arbitration Awards

Public Service Employee Relations Commission, BCLRB No. B80/2000 — The BCGEU applied under Section 99 for review of an arbitration award which concerned a preliminary objection made by the Union to certain evidence which the Employer sought to lead in a dismissal arbitration. The evidence resulted from tape recordings surreptitiously made by the grievor's neighbour.

The Board noted that Sections 99 and 100 of the Code provide two alternate means for parties to "appeal" arbitration awards, depending on the grounds for review. Based on the guidance set out by the BCCA in *Fording Coal,* the Board found that the main or determining ingredient of the arbitrator's award was whether the tape recordings and evidence flowing from them should be excluded. That ingredient involved a matter of general law. While the Employer acknowledged that an appeal from an arbitration award over the admissibility of evidence under the *Charter* would not always lie to the Court of Appeal, the present application clearly raised constitutional considerations under the *Charter* which were more appropriately addressed by the Courts. The Board was accordingly without jurisdiction to entertain the Union's application. *Held:* BCGEU's Section 99 application dismissed.

Castlegar and District Hospital (Represented by Health Employers Association of British Columbia), BCLRB No. B484/2000 — The Employer applied under Section 99 for review of an arbitration award which set aside the dismissal of the grievor and ordered reinstatement on certain conditions. The grievor is a registered nurse who suffers from a chronic addiction to narcotic and analgesic drugs. In an earlier award, the arbitrator had set aside an earlier dismissal on the basis that his theft of drugs was an integral part of his addiction. The Arbitrator reinstated the grievor on extensive conditions which included entering into a "last chance agreement" with the Employer before returning to active nursing employment. After entering into the last chance agreement with the Employer, the grievor returned to active employment. The Employer then terminated his employment again after finding drugs missing and confronting the grievor, who admitted to having relapsed and being back on drugs. In the award under review, the arbitrator set aside the second termination and reinstated the grievor on terms including a second last chance agreement.

The Employer argued the arbitrator committed a number of errors in relation to last chance agreements and the duty to accommodate up to the point of undue hardship. The Panel concluded that the issue of the relationship between culpability and undue hardship is a question of general law which lies beyond the jurisdiction of the Board under Section 99. *Held:* Employer's Section 99 application dismissed (with the exception of one matter which was remitted to the arbitrator for clarification).

Fording Coal Limited, BCLRB No. B90/2000 — The USWA, Local 7884 applied under Section 141 for reconsideration of BCLRB No. B45/99. The original decision granted the Employer's application for review of a preliminary decision of an Arbitrator which found that he, not the Joint Committee set up under the collective agreement, had jurisdiction because of institutional bias arising from the procedure for appointing Joint Committee Members. The procedure provided that the Employer appoint three of the five members of the Joint Committee, including the chair.

First, the Panel observed that the standard of fairness of the system devised by the parties

depends on the circumstances *(Pullman)*. The Panel distinguished *Douglas College* on the basis that nothing in the structure of the Joint Committee mandated any particular appointee. Therefore nothing in the Joint Committee structure or composition gave rise to a concern about actual bias, or a reasonable apprehension of bias in respect of the appointees *per se*.

Second, the Panel found that the fact that the parties agreed to the process, in the absence of extenuating circumstances such as duress or mistake, was a significant indication that the process was sufficiently fair for the nature of the problem it was designed to solve.

Third, the Panel noted that the right to raise an objection based on bias is not absolute *(A.B. Lumber)*. The Union had not waived its right to object to the Employer's appointee on the basis of actual bias, by agreeing that the Employer may select the chair; however, the Union had implicitly waived its right to raise a bias objection based exclusively on the process to which it agreed. The Panel further observed that, in return for the agreed process, the Union achieved a voice in the pension plan decision-making process, where the alternative might have been no voice.

Finally, the Panel noted that the due process requirement for fairness and neutrality is not a strict and inflexible standard. Instead, it depends on the circumstances of the case, including the nature of the tribunal and the issue before it. The Panel declined to determine whether the *nemo judex* rule is infringed by the mere fact that the parties have agreed that one of them will select and appoint the chair or that one party has more appointees to the tribunal than the other.

The Panel concluded that the prohibition against actual bias on the part of the chair of the Joint Committee sufficiently protected the neutrality of this process for the purpose for which it was devised. *Held:* Union's Section 99 application denied.

Fording Coal Limited, BCLRB No. B165/2000 — The Employer sought reconsideration of BCLRB No. B366/99 in which the original panel was unable to determine the basis for certain conclusions stated by the Arbitrator, and unable to determine whether the award complied with the principles of the Code. It remitted the matter back to the Arbitrator "in order to permit him to clarify the award" and "provide a reasoned analysis". On reconsideration the Employer argued that the original panel erred by failing to determine that the award was inconsistent with the principles of the Code and by only remitting the matter to provide reasons in support of the initial award. The Employer argued the award should be set aside and the matter remitted to the Arbitrator to consider afresh.

A lack of a reasoned analysis may breach Section 99(1)(a) or (b). The Board has jurisdiction to set aside an arbitration award, or remit matters back to an arbitration board. Where the Board sets aside the award, the entire proceeding is a nullity and in the absence of agreement the parties must undertake a new arbitration. Where matters are remitted, the arbitration board's original powers are revived and it may reconsider or complete matters remitted to it in accordance with any directions given by the Board. As long as the arbitration board remains within the terms of its revived jurisdiction, it may reach a conclusion which differs from that found in the initial award. *Held:* Employer's application granted in part. The original panel must determine whether the arbitration award complies with the requirements of the Code. If not, the original panel may exercise its remedial authority under Section 99 of the Code in a manner consistent with this decision.

Doman-Western Lumber Ltd., BCLRB No. B36/2000 — The IWA Canada, Local 1-80, sought review under Section 99 of an arbitration award in which the arbitrator held that although on a strict reading of the collective agreement the right to bid on a millwright apprentice position was open to all employees, the Union was estopped from advancing that position. The sawmill that was the subject of the present proceeding had undergone a succession of changes of ownership and was ultimately purchased by Doman-Western, the current owner, in November, 1997. The focus of the estoppel argument was a statement made at a formal plant committee meeting held in February 1989.

The Panel reviewed the authorities related to estoppel and concluded that the arbitrator was

entitled to infer that since the Employer had made its decision clear, the Union was under an obligation to speak up if it disagreed. According to the analysis adopted in *Vancouver Police*, the failure to speak up in such circumstances was tantamount to a representation that it agreed with the Employer's position. Although the award suffered from a number of deficiencies in terms of setting out the facts, on a sympathetic reading of the decision there were sufficient evidentiary bases for concluding: (i) that the Employer reasonably believed that by its silence the Union was acquiescing in the Employer's position on "dual trade,"; (ii) that the Employer had altered its position to its detriment by its loss of the opportunity to bargain its position into the collective agreement; (iii) that the estoppel generated in 1989 survived the agreements of March and November, 1991; (iv) and that to decide the Union was estopped from arguing its position until the next round of bargaining was an appropriate disposition having regard to the nature of the reliance and circumstances of the case. *Held:* Union's Section 99 application dismissed.

Fraser Lake Sawmills Ltd., BCLRB No. B405/2000 — Application for judicial review pending — The Employer applied under Section 141 for leave and reconsideration of BCLRB No. B310/2000 wherein the original panel dismissed the Employer's application under Section 99 for review of a preliminary arbitration award. The Employer had made an objection at arbitration that certain medical evidence was inadmissible "as subsequent event evidence" pursuant to *Quebec Cartier*, [1995] 2 SCR 1095. The Arbitrator dismissed that objection and the original panel upheld the Arbitrator.

Leave for reconsideration was denied in BCLRB No. B351/2000. In its reasons for decision, the reconsideration panel agreed with the analysis of the original panel. The effect of *Quebec Cartier* is to exclude consideration of post-termination events (e.g., rehabilitation) from the determination of just cause for dismissal. The decision does not render inadmissible relevant evidence pertaining to the state of facts in existence at the time of dismissal. It is common for parties to obtain evidence relevant to the then existing state of facts after the events in question have occurred. The medical evidence sought to be introduced in this case was an example of such evidence. *Held:* Employer's application for reconsideration denied.

The Board of School Trustees of School District No. 36 (Surrey), BCLRB No. B367/2000 — The Employer applied under Section 99 for review of an arbitration award. The Award granted a Supplemental Employment Benefit to a "birth father", on the basis that the distinction drawn in the collective agreement between adoptive fathers and birth fathers was contrary to the *Human Rights Code*. The Employer argued that by extending entitlement to birth fathers, the Arbitrator had amended the collective agreement, without jurisdiction to do so.

The Panel reviewed Section 89(g) of the *Labour Relations Code* which permits arbitrators to apply the *Human Rights Code* "despite any conflict between [that statute] and the terms of the collective agreement". This allows arbitrators to "override" a discriminatory collective agreement provision in order to avoid a conflict. There is no material distinction between deleting discriminatory collective agreement language which limits an entitlement, and adding language which provides the same entitlement. However, the question of whether the Arbitrator had jurisdiction to "amend" the collective agreement to conform with the *Human Rights Code* did not need to be conclusively answered in this case, as the Arbitrator had not amended the collective agreement. Rather, the Arbitrator found that the applicable collective agreement provision discriminated against birth fathers, and ordered the Employer to provide the Grievor with the benefit claimed. The Arbitrator had jurisdiction to interpret and apply the *Human Rights Code;* to declare that the collective agreement discriminates against birth fathers; and to grant a monetary remedy to the Grievor. *Held:* Employer's Section 99 application dismissed.

University of British Columbia, BCLRB No. B431/2000 — Application for leave for reconsideration pending — CUPE Local 116 and the Employer each applied under Section 99 of the Code seeking review of an arbitration award. The Employer argued the Arbitrator had unduly restricted her remedial authority

by reference to Article 8.01. The Panel rejected this argument. It agreed that arbitrators derive their remedial authority from the Code and cannot be prevented from exercising it by the terms of a particular collective agreement but added that arbitrators may properly consider and be guided by the parties' agreement. There was no indication on the face of the Award that the arbitrator felt *bound* by Article 8.01.

The Union's application regarding the termination grievance was allowed on the basis that the Arbitrator incorrectly ignored the grievor's length of service when deciding whether his discharge was excessive in all of the circumstances. The parties' collective agreement contained a sunset clause providing for the cleansing of a disciplinary record after a two-year period. The Arbitrator determined the sunset clause resulted in the grievor's service record being only two years, thus disregarding his first 10 years of employment. The Panel noted the importance the Board attaches to length of service as a mitigation factor in the context of a discharge grievance. (See *Wm. Scott* and *Drifter Motor Hotel*). When an arbitration board decides whether some discipline is excessive, it must not treat a grievor's length of service as being less than it actually is. The arbitral line of authority apparently relied upon regarding the effect of sunset clauses was inconsistent with the principles expressed or implied in the Code. The portion of the Award dealing with the termination grievance was set aside and the Panel determined that, unless the parties settle the matter, a new arbitrator must be appointed. *Held:* Employer's Section 99 application dismissed; Union's Section 99 application granted.

Arbitration Remedy

Robert B. Blasina, BCLRB No. B393/2000 — The Arbitrator applied under Section 98 for direction from the Board as to whether it was within his jurisdiction to award lump sum special and general damages. Section 98 permits an arbitrator to refer to the Board "any question of labour relations policy or interpretation of this Code arising in the course of an arbitration". The Arbitrator had been appointed under Section 104 to decide a grievance alleging that the Employer had failed to make deductions for dues and had not made RRSP and health and welfare contributions on behalf of an employee. The Employer was given notice of the hearing but failed to appear or participate in any way. In his award, the Arbitrator found that the Union had established liability, but indicated that he was unable to determine the damages owed by the Employer. He noted that the Union had not summonsed the Employer's payroll records to assist with quantification of damages, but said it would be "naïve" to expect that the Employer would have obeyed the summons.

The Panel held that in the absence of "best evidence" in the form of payroll records it is open to an arbitration board to quantify to the best extent possible the amount of damages attributable to the Employer's failure to follow the collective agreement. The fact that such an assessment of damages may be difficult is no ground for refusing to provide a remedy. A remedial order may be fashioned on the best estimates available when faced with either inadequate information or a refusal to obey orders for production of documents. In the present case, it appeared that there might be other sources of information that had not yet been canvassed, and the Employer had not yet refused to obey an order for production of documents, as no such order had yet been issued. In those circumstances, the Panel declined to answer the jurisdictional inquiry, as it may prove to be unnecessary if the other measures suggested are followed.

Arbitrator's Fee

James E. Dorsey, BCLRB No. B233/2000 — The Arbitrator applied pursuant to Section 90(1)(c) of the Code for an order directing the Employer to pay its one-half share of the fee charged by the Arbitrator for his services, plus interest. Section 90 of the Code states that where two parties are involved in an arbitration, the costs are to be shared equally. The Arbitrator had been properly constituted and had the jurisdiction to adjudicate the cases assigned to him under Section 104 of the Code.

The Employer had refused to pay its share of the fee because, among other things, it disagreed with the outcome of one award. The Panel held that the appropriate avenue for expressing disagreement with an award was

through an application under Section 99 of the Code, not a refusal to pay the Arbitrator's fees and expenses.

The Employer also argued impecuniosity but the Panel determined that Section 90 is a mandatory provision which does not provide for an assessment of a party's ability to pay.

The Panel ordered the Employer to pay the Arbitrator's accounts and pursuant to Section 135 of the Code the order was filed in the Supreme Court Registry. The Arbitrator had also applied for interest from the date of the Board order. The Panel held it had jurisdiction to order such interest but found it unnecessary to do so in the circumstances because the filing of the Order in the Supreme Court would cause post-judgment interest to run from the date of filing in accordance with Section 7 of the *Court Order Interest Act*. *Held:* Order granted to the Applicants.

COLLECTIVE BARGAINING

Natural Glacial Waters Inc., BCLRB No. B329/2000 — The Brewery, Winery and Distillery Workers Union, Local 300 applied for reconsideration of BCLRB No. B272/2000. The Original Decision found the Union's pre-strike vote invalid because the Union had not yet "bargained collectively" under Section 59(1) of the Code. While denying leave for reconsideration, the Panel confirmed the Board's jurisprudence on the requirements of Section 59(1), including the following principles:

(a) There must be an exchange of proposals and a reasonable opportunity for discussion on all the key or central issues in dispute. However, there is no requirement that every item or proposed change to the collective agreement be discussed.

(b) The requirement for discussion of key issues can be met by a combination of oral discussion and/or written proposals, provided a reasonable opportunity to ask questions about and discuss the written proposals is provided.

(c) The motivation for serving strike or lockout notice is not relevant to a consideration of whether the Section 59(1) requirement to have "bargained collectively" has been met.

(d) The conduct of the party claiming relief may be considered in assessing whether the relief sought should be granted, particularly where it is found to have deliberately or unreasonably delayed or hindered negotiations or otherwise failed to bargain.

Held: Union's application for reconsideration dismissed.

CONSTRUCTION INDUSTRY

Certification

Globe Mechanical (1991) Ltd., BCLRB No. B283/2000 — The Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 170 ("Local 170") applied for reconsideration of BCLRB No. B28/99. The original panel had dismissed Local 170's objection to CLAC's application for certification of an all-employee unit consisting entirely of plumbers and plumbers' apprentices. Local 170 had argued that the unit was a "craft" unit, and therefore could only be certified by a "craft union" under Section 21.

The Board rejected Local 170's reconsideration application. The Board noted that at its simplest, Local 170's argument was that there cannot be a wall-to-wall certification for a unit consisting only of craft employees. However, the Board held that the choice of which model of representation to pursue in the construction industry rests with the employees. Craft units and all-employee units each have their own advantages and disadvantages, but both are appropriate. CLAC could not apply under Section 21 for a craft unit of plumbers, because it is not a union pertaining to that craft. However, it is free to apply for an all-employee non-craft unit under Section 18. The fact that all of the employees in the unit share the same craft does not preclude representation as an all-employee, non-craft unit. *Held:* Local 170's application for reconsideration dismissed.

Vertex Construction Services, BCLRB No. B122/2000 — IUOE, Local No. 115 applied under Section 141 for reconsideration of BCLRB No. B528/98. The original panel considered two applications for certification, the first was filed

by the IUOE for its traditional craft unit and the second was filed six days later by Christian Labour Association of Canada, Local No. 68 for an all employee unit. At issue was which application should be processed first. The original panel determined that CLAC's application should be processed first.

The Board has jurisdiction to consider not only competing applications for certification filed for substantially the same bargaining unit but also competing applications received generally for the same workplace. In either case, provided the second application is filed contemporaneously (defined as received within 10 days) it should be considered together with the first application. Outside construction, where competing applications are filed contemporaneously, an application for a larger unit will be preferred and processed first given the concerns regarding access to collective bargaining, industrial stability and administrative efficiency. However, in the construction industry there has historically been a recognition that there are two models of representation, the craft and all-employee models, both of which are appropriate. Because both structures offer access to collective bargaining and neither raise concerns about industrial stability on an initial application for certification, there is no reason to prefer one application over the other. Further, the consideration of administrative efficiency does not apply in construction, as CLAC would not be able to immediately apply for an all-employee unit if IUOE was certified: see Section 21. *Held:* IUOE's application for reconsideration allowed and the original decision set aside.

General

Labour Relations Regulations 3.1, BCLRB No. B10/2000 — Following consultation with various stakeholders in the construction industry, the Board issued a Section 143 declaratory opinion with respect to the length of time for which a Regulation 3.1 expression of support form will be valid and whether there is any requirement to indicate the name of the employer on the form. The Board issued two non-exhaustive policy statements in respect of these issues: (1) An expression of support form must be signed and dated by the employee within six months of the application for certification. (2) An expression of support form will be considered as confirmation of the employee's wishes in support of an application for certification for the employer for whom the employee is working (or on a normal day off) on the date affixed to the card.

The Jurisdictional Assignment Plan Umpire, BCLRB No. B395/2000 — The Umpire applied under Section 98 of the Code seeking a determination as to whether the Glaziers, Local 1527 was a trade union certified for a craft unit as defined under Section 55.1 of the Code. A preliminary issue arose as to whether the Board should accept the referral under Section 98 or whether the matter should be remitted back to the Umpire for determination. The referral arose out of a dispute between Local 1527 and the Iron Workers over work on a project. The Iron Workers applied to the Umpire seeking to have the work assigned to its members. In response, Local 1527 asserted that the certification granted to Local 1527 in respect of the contractor was not for a craft unit but rather one for a wall-to-wall unit and was therefore outside the scope of Part 4.1 of the Code.

The Panel noted that the issue was one of first instance involving the interpretation and application of Part 4.1 of the Code. The question referred under Section 98 raises issues of potentially broader import than the immediate work jurisdiction issue between the parties. It goes to the jurisdiction of the Umpire, and potentially involves interpretation and application of Sections 21 and 22 as well. The Panel noted that Section 55.1 defines a craft unit as one which has been recognized by the Board as such or one which "in the opinion of the Board" is a craft unit. In all of the circumstances, it was appropriate for the Board to take jurisdiction and determine the question of whether the certification in issue was one for a craft bargaining unit.

The Jurisdictional Assignment Plan Umpire -and- GEM Glazing -and- Advanced Glazing Systems Limited, BCLRB No. B498/2000 — The Umpire under the Jurisdictional Assignment Plan applied to the Board under Section 98 seeking a determination about whether a bargaining unit held by the Glaziers, Local 1527 was a craft unit as defined by Sec-

tion 55.1 of the Code. Section 55.16(2) deems the Plan to be part of every collective agreement that applies to a craft unit in the construction industry.

The Board held that a craft unit is "recognized" as such by the Board for the purposes of Section 55.1 if it was granted for a unit of craft employees and the resulting certification bore a traditional craft description or indicated that it had been granted as a result of an application under Section 21.

When considering the second element of the definition, the Board will look beyond the wording of the certification and consider factors such as the nature of the certified union, the practice of the parties, the provisions of the collective agreement, and the duties, skills and training of the employees in the unit. In order for a unit to be found to be a craft unit, the employees must be working in a craft and the union must traditionally represent that craft.

Local 1527's was not on its face a craft unit because it had an all employee description. However, the unit was a craft unit for the purposes of Section 55.1 under the second element of the statutory definition.

With respect to future determinations under Section 55.1, the Board will generally defer such determinations to the Umpire as a specialized arbitration board. The Umpire has both the expertise and jurisdiction to determine whether a unit is a craft unit within the meaning of Section 55.1. However, the Umpire's decision in this respect will be reviewable by the Board under Section 99 on a correctness standard. Further, the Umpire will continue to have the option to refer a Section 55.1 determination to the Board under Section 98 where the matter raises issues of law or policy of the Code or involves complex factual or legal issues more appropriately heard by the Board. Finally, it is open to a party to bring an application seeking a declaration under Section 55.1 at any time (i.e., outside the circumstances of a dispute before the Umpire). *Held:* Local 1527's certification was for a craft unit.

ADJUSTMENT PLAN

Pacific Pool Water Products Ltd., BCLRB No. B43/2000 — CAW, Local 3014 claimed the Employer breached Section 54 of the Code by failing to provide notice that it was selling its assets and inventory. The Employer claimed it was unable to provide the required notice because confidentiality was critical to the sale proceeding, thus the Section 54 obligation did not arise.

An employer has an obligation to discuss changes coming within Section 54 before the changes occur. The obligation arises when the change has crystallized. The corollary to the obligation on the employer under Section 54 is that the union has an obligation to ensure the confidentiality of sensitive information provided to it by the employer in the context of those discussions. The Employer was obliged to provide notice. A meeting held with employees did not meet the Section 54 requirements, and when notice was subsequently given to the Union it did not meet the 60 day notice requirement. Section 54 discussions, although conducted in good faith, did not occur until well after the sale closed which denied the employees the substantive benefits of the Section.

The loss of notice was compensable. Here, the last day worked for most employees was October 30; therefore an order for lost wages for the remainder of the notice period was the appropriate remedy. The Union waived any claim for damages on its own behalf. The principles of mitigation applied to both the Union and the employees. The fact that the Union did not initiate a successorship application was relevant to quantifying damages. Thus, the principles of mitigation would apply only to the period following the Section 54 discussions on November 23, when the options available to employees became apparent. *Held:* Union's application granted.

LABOUR DISPUTES

Essential Services

G.R. Baker Memorial Hospital, BCLRB No. B158/2000 — HEABC applied for reconsideration of BCLRB Nos. B316/99 and B45/2000, which were issued in respect of an essential services dispute in health care.

The Panel adjourned the matter *sine die*. The Board has consistently employed a mediative

approach to essential services disputes. In this case, the parties are sophisticated, capable and mature enough to settle most issues on their own or with the assistance of mediation (*HEABC*, BCLRB No. B73/96). The Panel observed the parties had successfully developed a methodology for addressing contentious issues in relation to essential services designations when they met under the auspices of the Centre for Labour and Management Studies. The mediative approach is also consistent with the comments of the original panel in BCLRB No. B316/99 and the objects of the Code as set out in Section 2. The parties were directed into mediation in order to discuss options available with regard to the implementation of essential services plans under a variety of circumstances, particularly those that arose in the present dispute. *Held:* HEABC's applications adjourned *sine die*.

Strike Vote

Jim Pattison Industries Ltd., operating under the firm name of Jim Pattison Toyota, BCLRB No. B140/2000 — The Employer applied under Section 60(2) seeking to have IWA, Local 1-3567's pre-strike vote set aside. The Union's Returning Officer had permitted four employees to vote at times and/or places other than those provided for in the notice of poll and had refused to permit three employees to vote based on his belief that they were outside of the bargaining unit. When other employees expressed concern that Steve Young, one of three who had been turned away by the Returning Officer, ought to have been permitted to vote, the Vice-President of the Union surveyed the employees present to determine how Young might have voted and then cast a "no" vote on behalf of Young. The result of the vote was 19 in favour of a strike mandate and 10 opposed.

The Returning Officer had breached the Regulation by allowing the four advance ballots to be cast. An advance poll may be set, but it must comply with the Regulation. The Officer also erred in refusing to permit the three employees to vote. Regulation 13(2)(e) does not permit a union-appointed returning officer to determine questions of eligibility, but merely to resolve eligibility disputes in the sense of settling or solving them for the time being, whether by double sealing or other means.

Even if proxy votes were permissible in the Section 60 context, the vote cast on behalf of Young was not authorized by Young and neither the Vice-President nor the Returning Officer was operating under a *bona fide* belief that authorization had been given. The public survey conducted to determine how Young might have voted was not only fundamentally inconsistent with voter privacy and secret balloting, it was seriously destructive of the solemnity of the voting process. Further, the Union had filed with the Board a Return of Poll signed and certified by the Returning Officer. One of the ballots there recorded as issued and returned was the "proxy" vote, notwithstanding that the ballot in question was not issued to Young nor any other employee.

The conduct of a pre-strike vote can be sufficiently problematic that it should be set aside notwithstanding that the majority outcome remains a matter of mathematical certainty. A vote may be cancelled simply for its lack of integrity and inconsistency with the principles of the Code and/or policies of the Board. In particular, where the integrity of the voting process is thrown into question to the extent that it cannot be said that the vote taken is, on the whole, capable of fulfilling the policy purposes underlying Section 60(1), it may be set aside on that basis.

The panel declined to apply Section 156 to relieve the Union from the irregularities. In the circumstances of the case, the cumulative effect of all of the flaws identified in the vote is such that it would be inconsistent with the Code to regularize and uphold the vote under Regulation 20. *Held:* Employer's application allowed; Vote declared invalid for purposes of Section 60(1) and strike notice served pursuant to the vote declared null and void.

Can-Am Produce & Trading Ltd., BCLRB No. B497/2000 — The Employer applied for reconsideration of an original decision dismissing the Employer's challenge to a pre-strike vote. The RWU Local 580 had received a strike mandate under the vote by a 4:3 margin. The original panel had determined that an employee who did not have sufficient continuing interest in the bargaining unit had taken part in the vote. However, the original panel

further found that it should exercise its discretion under Sections 71 and 133 to decline to set aside the vote by reason of the Employer's "improper conduct." The Employer had, through its manager, encouraged the employee in question to vote. The Employer only challenged the employee's eligibility to vote after becoming aware of the outcome of the vote and after asking the employee how he had voted.

The reconsideration panel concluded that the original panel's exercise of discretion under Sections 71 and 133 was inconsistent with Board policy. There was no evidence of employer interference in the vote that would lead one to conclude that the vote did not reflect the true wishes of the employees. The employee in question did not have sufficient continuing interest to entitle him to vote. In the circumstances, the employee's vote may have been determinative of the outcome of the vote. Allowing the vote to stand was unfair to the employees in the bargaining unit. Even if the Employer's conduct could be considered improper, it was neither illegal, unconscionable nor egregious. *Held:* Employer's application for reconsideration allowed; original decision and strike vote set aside.

Consolidated Container Co. Ltd., BCLRB No. B18/2000 — The Employer applied under Section 60(2) of the Code for a declaration that a pre-strike vote conducted by the IWA Canada, Local Union Number 1-3567, was invalid.

The Board's approach to reviewing pre-strike votes was set out in *P. T. Savage.* The Board has long recognized that pre-strike votes are often taken under less than ideal conditions *(Canyon Aerial Tramways).* The Union met all procedural requirements regarding pre-strike votes. The mere existence of an ethnically diverse bargaining unit was insufficient to establish a need for a translated ballot and/or translator. For the purposes of this decision, the Board accepted the Employer's assertion that at least one employee had not left the lunchroom after depositing his ballot. In this regard the Union technically breached Schedule 1 to Regulation 13(2)(f) but the breach had no material effect on the vote and was relieved against pursuant to Section 156 and Regulation 20(b). The Union had not failed to ensure that the vote was conducted by secret ballot. Regulation 13(2)(g) and 8(2)(o) does not require ballots be counted immediately following closure of the final poll and the time period here was not improper, prejudicial or unreasonably long. The other factors cited by the Employer, such as the use of pencils or an excessive number of available ballots, whether considered individually or taken together, did not raise an inference of tampering or fraud. The fact that alternative and/or possibly more fraud-resistant voting practices were available did not render existing practices fraudulent. *Held:* Employer's application dismissed.

Strike Notice

Superior Poultry Processors, BCLRB No. B274/2000 — The Employer applied under Part 5 for an order directing the Union to provide nine weeks strike notice in order to ensure the preservation of perishable property. The Employer also sought an order permitting it to re-direct or deliver poultry to a third party including other poultry processors, and a further declaration that any such third party taking delivery of the re-directed poultry is not an ally for the purposes of Section 65(4) of the Code.

Noting that this was a case of first instance, the Board observed that Section 60(4) gives the Board the discretion to direct a trade union to give more than 72 hours strike notice for the protection of perishable property. The Board concluded that Section 60(4) is intended to provide the Board with the discretion to deal with "extraordinary circumstances", and that the Board must exercise that discretion in accordance with the purposes of the Code set out in Section 2(1). The Board stated that an applicant seeking relief under Section 60(4) is required to persuade the Board, on the basis of "clear and cogent evidence", that 72-hour strike notice is insufficient to ensure the preservation of property which will spoil imminently. In the present case, the Board declined to grant an order extending the strike notice for a period of nine weeks, but found that it was appropriate to extend the strike notice for an additional 72 hours to clear poultry in transit to the plant or already at the plant. With respect to the Employer's application for a declaration con-

cerning ally status, in the absence of any evidence of specific arrangements entered into or even contemplated, the Board found there was no basis to grant a blanket order of the type sought by the Employer. *Held:* Employer's application under Section 60(4) granted in part.

Illegal Work Stoppages

KTL Transport Inc., BCLRB No. B22/2000 — The Teamsters Local No. 31 sought reconsideration of BCLRB No. B485/99. The Union applied to be certified for a bargaining unit of employees at KTL, including the Owner Operators. During the certification proceedings a general work stoppage occurred which officially ended when a Memorandum of Agreement between a number of trucking companies and representatives of the truckers was signed. KTL did not sign the MOA. The original panel concluded that the strike was illegal and the Union was liable for damages to KTL as a result of the Union's violation of Section 32(1).

The Panel dismissed each of the six grounds raised by the Union on reconsideration. In part, the Union argued that it was illogical and inconsistent with the definition of a strike in Section 1 of the Code to conclude that employees could be on strike after having been terminated. The Panel concluded otherwise, noting that the original panel's purposive approach was: (i) consistent with the law and policy of the Code *(Wolverine Tube);* and (ii) was consistent with the approach taken in various jurisdictions where the concept of a strike has been interpreted purposively in order to best attain the objects of the governing statute *Held:* Union's application for reconsideration dismissed.

Picketing

British Columbia Institute of Technology, BCLRB No. B61/2000 — Leave for Reconsideration denied in BCLRB No. B171/2000 — The Employer applied under Sections 65(3) and 67 of the Code for an order to restrain the BCIT Faculty and Staff Association from picketing at the parkade under the Employer's campus building. In BCLRB No. B465/99, the Board granted the Employer's application; the reasons are set out in this decision.

The Employer argued that the parkade was not a "primary site" within the meaning of Section 65(3), and that since Association members were picketing the main entrance to the building, it was already using its primary site picketing rights.

The Board found the Employer was entitled to bring an application for a determination about whether the parkade was a primary picketing site despite the fact that the parkade was operated by a third party. The Employer was directly affected by the picketing at the parkade, it owned the parkade, and received revenue from its operation.

The Board concluded that the parkade was a separate and distinct operation from the Employer's campus and not part of the primary site because the parkade was a public facility managed by a third entity, there was no direct access from the parkade to the campus, the parkade was not covered by the collective agreement, no parking stalls were allocated to Association members, and Association members paid the same rate as the public for parking. It was of no consequence that the parkade was underground in the same building as the campus, that the Employer owned the entire building, or that some Association members did course preparation in their cars in the parkade. Further, no Association members worked at the parking garage. The parking garage was therefore not a primary picketing site. *Held:* Employer's application granted.

Transcontinental Printing Ltd., Dolphin Delivery Ltd., Southam Inc., BCLRB No. B396/2000 — The CEP, Local 2000 and Certain Individuals applied for reconsideration of an Interim Order granted on application by Transcontinental *et al.* The Interim Order restrained picketing at Transcontinental's premises and named the Union, Certain Individuals and "Certain Unidentified Persons" as respondents. A reconsideration panel granted leave on the following issues: whether the respondents had received proper notice of the application for an interim order; whether Transcontinental *et al* had failed to comply with a condition of the Interim Order; and, whether the scope of the Interim Order was contrary to the *Charter of Rights and Freedoms* in that it extended to consumer leafleting and other constitutionally protected activity. The reconsideration panel declined to grant

leave with respect to certain other arguments on the basis that those arguments could not be addressed in the absence of reasons from the original panel.

On the basis of the statutory declarations filed, the reconsideration panel concluded that no notice of the application was given to Certain Individuals or Certain Unidentified Persons. Moreover, the Union had not been properly served with the application. The Interim Order was set aside on that basis. The reconsideration panel found that the filing and/or service of a written application for the Interim Order by May 1st was not an express condition of the Interim Order and thus dismissed the argument that the Interim Order was defeated by an alleged failure to comply with any such "condition subsequent". Finally, the reconsideration panel found that the scope of the Interim Order was impermissibly broad and amounted to "prior restraint" of lawful activity protected by the Charter. The definition of picketing in the Interim Order ought to have included such words as "but does not include consumer leafleting". Such language will be used by the Board in future cases. *Held:* Union's application for reconsideration granted in part and Interim Order set aside.

Transcontinental Printing Ltd., Dolphin Delivery Ltd., and Southam Inc., BCLRB No. B440/2000 — The Employers alleged that CEP Local 2000 and named Individual Respondents breached Section 67 of the Code by engaging in unlawful picketing.

Local 2000 is a local union of CEP National. Local 2000 represents the employees of Pacific Press, a division of Southam. Another local of CEP National, CEP Local 118, represents employees at The Calgary Herald. Local 118 was on strike against The Calgary Herald.

A group of persons participated in a protest rally. A large banner and buttons and jackets included words identifying the CEP National. The banner read "Boycott The National Post"; other materials read "Heralding Workers' Rights in Calgary".

The panel found the protest constituted conventional picketing as described by the SCC in *UFCW, Local 1518* v. *Kmart* (1999), 176 DLR (4th) 607, in that it was activity "employing the 'signal effect' to cause union members [the Dolphin Delivery drivers] not to go to work out of a sense of trade union solidarity". However, the rally was part of CEP National's boycott campaign arising out of Local 118's bargaining dispute with The Calgary Herald. The panel rejected the Employers' contention that the rally came about because Local 2000 had adopted the dispute at The Calgary Herald as its own dispute with Pacific Press. There was no evidence that Local 2000 had caused any of its members to participate in the rally or had made any demand on the Employers or Pacific Press with respect to its members. The picketing was not with respect to a labour dispute within the province of British Columbia, and the Board was without jurisdiction to regulate it. *Held:* Employers' application dismissed.

Westfair Foods Ltd. (Shop Easy Division), BCLRB No. B414/2000 — Westfair applied under Sections 67, 133 and 143 of the Code for an order prohibiting the UFCW, Local 1518 from engaging in what Westfair characterized as picketing and coercive activity at various locations of its operations. The Union said it was engaged in leafletting as permitted under *UFCW Local 1518* v. *Kmart*, (1999), 176 DLR (4th) 607 (SCC).

The Union was engaged in a lawful dispute with Fletcher's Fine Foods and had no bargaining relationship with Westfair. Before the labour dispute, Westfair offered Fletcher's products for sale in its stores and it continued to do so after the strike commenced. Individuals leafleted the stores and told Westfair they would continue to do so until the Fletcher products were removed. The Panel found that the leafletting activity met the criteria set out in *Kmart* for permissible consumer leafletting. It was carried out peacefully without placarding, barricading or impeding access to the stores. Further, the Union had not crossed the line from peaceful persuasion to coercion when it told Westfair that the leaflets would remain unless Fletcher's product was removed: *Delta Hotels,* BCLRB No. B433/95. Westfair sought, as an alternative, an order prohibiting access to Westfair property and redirecting the leaflets to public property. The Board denied this request because issues of trespass are beyond the jurisdiction of the Board. *Held:* Westfair's application dismissed.

Paul Mercs Concerts Inc., BCLRB No. B398/2000 — PMCI applied under Section 65(6) seeking an order restricting CUPE, Local 15 from picketing at or near the stage and loading doors to the Queen Elizabeth Theatre between October 2nd and 4th. CUPE was on strike against the City of Vancouver. The City owned the Theatre and employed employees at the Theatre. Prior to the strike, PMCI, a promotion company, had entered into a rental contract pursuant with the City to which it intended to use the Theatre on October 3rd and 4th to mount three performances of a musical production. In order to stage the production, it was necessary for the production company to unload a number of trucks and operate staging equipment using the services of a number of IATSE members. The IATSE members would not cross the CUPE picket line.

The panel found that PMCI had standing to bring its application and that the Theatre was a common picketing site. In the circumstances, the application for relief was not premature. The picketing was imminent and any delay in the unloading process would effectively deny PMCI meaningful relief. Because CUPE could still picket the front and public doors to the Theatre, the proposed restrictions did not amount to a complete prohibition under the first stage of the *Sovereign* (BCLRB No. B451/94) analysis. Further, since the restrictions did not amount to a prohibition, it was unnecessary to deal with CUPE's arguments relating to functional integration, the uniqueness of municipal strikes, or whether PMCI had interjected itself into an ongoing dispute. In any event, the question of whether a third party had interjected itself into an ongoing labour dispute should be approached contextually and take into consideration the practices of the particular industry. In the circumstances of the case, PMCI had not interjected itself into an ongoing dispute. An order was issued on the terms sought by PMCI. *Held* PMCI's application granted; common site picketing order issued.

Replacement Workers

Famous Players Inc. and Cineplex Odeon Corporation, BCLRB No. B141/2000 — In BCLRB Nos. B199/99 and B200/99, the original panel concluded that both employers had violated Section 68; Famous Players with respect to its utilization of two individuals, and Cineplex Odeon with respect to a single individual. IATSE, Local No. 348 applied under Section 141 for reconsideration of both decisions.

The original panel had been faced with conflicting evidence regarding the complexity of the bargaining unit work. In weighing the evidence as *per Farnya* v. *Chorny*, the original panel referenced new technologies in home entertainment equipment. The use of common experience as an aid in weighing the balance of probabilities was consistent with the principles of the Code and the Union was not denied a fair hearing thereby. The reconsideration panel also upheld the original panel's interpretation of the phrase "ordinarily works" in Section 68(1)(b) as consistent with the approach adopted in *British Columbia Automobile Association*, BCLRB No. B94/99 (upheld on Reconsideration, BCLRB No. B277/99).

The reconsideration panel declined to review the original panel's discretionary decision not to order an investigation. The panel further noted the importance of the distinction between the hearing disclosure process and the Board's investigative process. Parties are expected to disclose the evidence necessary to clearly identify the work in question, who performed the work prior to the dispute, and who performed the work thereafter, in order to ensure that original panels have an adequate evidentiary basis. The reconsideration panel also declined to address the argument that the original panel had misinterpreted the word "transferred" in Section 68(1)(c). Because the original decision was in the relevant respect based on a finding that three theatres were operated as a "cluster" and constituted a single place of operation, it was unnecessary to review the original panel's alternative reasoning.

The reconsideration panel confirmed the finding that the Employers can open new locations during the labour dispute and use the existing employees of the relevant cluster to operate the new theatres. However, the legitimacy of any given placement into a cluster will be determined on the basis of Employer practices or decisions which existed or crystallized prior to a Section 68 triggering event.

Finally, the original panel erred in describing an individual, Eagle, who was not taking on new tasks that are the work of the bargaining unit as an eligible replacement worker. As Eagle was only continuing to perform the same work he had done prior to the dispute, the reconsideration panel declared that Eagle was not an eligible replacement worker. *Held:* Union's application for reconsideration allowed with respect to Eagle, but dismissed with respect to all other grounds.

Famous Players Inc., BCLRB No. B145/2000 — In BCLRB No. B199/99 (the "first decision"), an earlier panel of the Board held that the Employer's Vancouver Centre and Capitol 6 theatres had, since a time prior to the labour dispute with IATSE, Local No. 68, formed a management "cluster" which constituted a single place of operation for the purposes of Section 68. Effective August, 1999 the Employer reconfigured this grouping of theatres to form a new "cluster" of theatres. In BCLRB No. B496/99, the original panel found that the Employer had breached Sections 6 and 68 of the Code by using certain individuals to perform projectionist work at its Vancouver Centre theatre in 1999. Neither of the individuals in question had worked at either Vancouver Centre or Capitol 6 prior to the reconfiguration of the cluster. The original panel held that the Employer was not entitled to add, following the start of the strike or lockout, an additional place of operation to where an individual ordinarily works for the purposes of Section 68(1)(b). The Employer applied for reconsideration under Section 141.

The policy articulated in the first decision and upheld in BCLRB No. B141/2000 allows an employer to implement *bona fide* business plans based on practices or decisions which have crystallized prior to any Section 68 triggering event. However, the balance achieved by that policy would not be realized if employers were permitted to reconfigure operational clusters for the purposes of finessing Section 68. In the case at hand there was no evidence establishing the bona fides of the change to the Vancouver Centre cluster or even when the decision to reconfigure was made. The original decision is consistent with both Section 68 and the Board's policy as set out in BCLRB No. B141/2000. *Held:* Employer's application for reconsideration dismissed.

RIGHTS, DUTIES AND UNFAIR LABOUR PRACTICES

Unfair Labour Practices — Employer Misconduct

Tillicum Haus Society (Tillicum Haus Native Friendship Centre), BCLRB No. B278/2000 — The BCNU applied for reconsideration of BCLRB No. B424/97 in which an original panel, assuming it had the requisite jurisdiction to award such damages, declined to award monetary compensation for hurt feelings and emotional distress to an employee unjustly terminated for reasons of anti-union animus.

The Union relied on the SCC decision *Wallace* v. *United Grain Growers Limited*, [1997] 3 SCR 701 to support its argument that the Board could and should award damages for mental distress. *Wallace* was a refinement of *Vorvis* v. *ICBC* (1989), 58 DLR (4th) 193 (SCC). In both of those cases the Court was addressing the superior courts' inherent remedial jurisdiction in the wrongful dismissal context. As the right to dismiss with reasonable notice has no place in modern labour law, neither the *Wallace* nor *Vorvis* decisions are relevant to the issue of the scope of the Board's remedial jurisdiction under the Code. Moreover, those decisions addressed the issue of potential implied good faith obligations in the common law employment relationship. The Code, by contrast, expressly addresses certain forms of bad faith conduct (see Sections 5 and 6).

The Legislature intended to confer upon the Board the broad array of remedial powers necessary to vindicate the purposes of the Code and to set aside the effects of breaches of the Code. To this end the Board was directed to act with expedition with respect to issues of dismissal and discipline (Section 5(2)) and, for example, is empowered to order reinstatement. However, an order assessing and awarding damages for mental distress will not further the restoration of the affected employee's statutory right to choose union representation, nor does the Board have any expertise relevant to the

making of such an order. The Legislature did not intend the Board to award aggravated damages for mental distress.

Finally, even if the Board did have the requisite jurisdiction to award monetary damages for mental distress, such awards should, as a matter of policy, be limited to cases involving extremely egregious conduct. The original panel held it would be inappropriate to order such damages in the circumstances of the present case, and the reconsideration panel would not be prepared to interfere with that finding. *Held:* Union's application for reconsideration dismissed.

North American Construction Limited, BCLRB No. B267/2000 — The IUOE Local 115 applied for certification pursuant to Section 19. It also alleged the Employer had committed unfair labour practices by, among other things, stacking the bargaining unit constituency and by adding to payroll records names of persons who were not genuine employees of the Employer. The Employer argued the Union's allegations were academic because it had since agreed that the employees in question would not be on the voters' list. It also argued that it had every right to place employees on its British Columbia payroll and any problems with payroll records were inadvertent.

The Panel found that the Employer had committed a fraud on the Board by knowingly altering records such that it would appear to the IRO that certain employees worked for the Employer in British Columbia when they did not and that employees were working for the Employer before they actually did. The Employer had also transferred employees from another company to its own in an attempt to obscure the true constituency. As part of a random audit system, the Board has mandated IROs to conduct checks of original employer records to ensure that accurate information is being provided but the processes in place simply would not have uncovered the deception in this case. The Employer must have known that the very nature of the investigative machinery would not be able to identify the inaccuracies that it planted in the records upon which it knew the IRO would rely. The Employer had attempted to exploit the weakness in the system, that is the requirement for good faith and honesty on the part of the parties. Therefore, the Employer engaged in fraudulent misrepresentation with regard to the scope of the constituency for the purposes of misleading the IRO and the Board. The Employer committed an unfair labour practice by fraudulently misrepresenting the size of its work force which constituted improper interference with the formation and selection of a union.

In this case, a mere declaration of unfair labour practice was not an adequate remedy. The other usual remedies were also not appropriate because of the potential impact on the incumbent union's rights and the employees' right to select their bargaining agent. The exceptional and compelling circumstances in this case warranted an award to the Union of legal costs for that part of the case related to stacking. Although the Panel noted case law that indicated that costs of in-house legal counsel are taxed in court with the usual procedure, it left the manner of taxation to the parties to decide. *Held:* Union's application granted in part.

7-Eleven Canada, Inc., BCLRB No. B389/2000 — The UFCW, Local 1518 alleged the Employer breached Sections 6(3)(a) and (b) of the Code by giving a two-week disciplinary suspension to an employee during the course of a certification campaign. The issues were whether a certification campaign was in fact occurring at the time of the discipline; whether there was just cause for the discipline; and whether the discipline was motivated by anti-union animus. The Panel found that the Union had met, albeit just barely, the evidentiary requirement to establish an ongoing certification campaign. In so finding, the Panel noted that a union cannot remain in a constant state of organizing simply because it is interested in representing a group of employees. It cautioned the Union that in future it might have to meet a higher evidentiary threshold to establish that it is still seeking to organize these employees. Having found that the discipline took place during a certification campaign, the Panel next concluded that proper cause for a two-week suspension was not established, particularly in light of the Employer's failure to conduct a proper investigation. In all the circumstances a two-week suspension was excessive and should be reduced. Finally, the

Panel concluded that it had not been established that the degree of discipline imposed had been motivated by anti-union animus. *Held:* Union's Section 6(3)(a) complaint dismissed; Sectior. 6(3)(b) complaint allowed and suspension reduced from 10 working days to five.

Catholic Independent Schools Diocese of Prince George, BCLRB No. B253/2000 — Application for leave for reconsideration pending — The BCGEU alleged that the Employer failed to bargain in good faith by engaging in surface bargaining, making an unlawful bargaining demand, and bargaining to impasse a demand inconsistent with the Code. The Employer had proposed a Catholicity clause which it said meant that the Bishop's decisions would be final regarding discipline or dismissal of Catholic teachers for religious reasons. The Union argued that this proposal conflicted with Section 84(2) because it exempted the Bishop's decisions from arbitral review. Alternatively, the Union argued that if the Employer's proposal was taken as contemplating that the Bishop himself would arbitrate Catholicity disputes, such a proposal was inconsistent with the scheme of Part 8. The Union argued that the Employer also failed to bargain in good faith when it bargained to impasse regarding these proposals. The Union also argued that the Employer committed an unfair labour practice because it had closed the school because of these disagreements at the bargaining table. The Employer argues that it has a right to require a Catholicity clause: *Marian High,* [1984] 2 SCR 603.

The Panel did not disagree that the Employer had the right to table a Catholicity clause. However, the Panel found the Employer, by its proposal, was effectively proposing that there would be no dispute resolution mechanism regarding disputes arising from a decision of the Bishop, contrary to Section 84. *Marian High* was distinguished because in that case a dispute resolution mechanism was not proposed or addressed in bargaining. The Panel found there was no evidence that the Employer was proposing that the Bishop himself would be an arbitrator. However, even if that was the Employer's intention, such a proposal would be inconsistent with the scheme of the Code because the Bishop sitting as an arbitrator would raise a reasonable perception of bias. The Panel also found that the Employer had engaged in surfacing bargaining. While a party may adopt a nonproductive bargaining strategy now and again, the pattern in this case of delay, roadblocks, preconditions, and anti-union animus cumulatively evidenced the absence of any intention on the part of the Employer to reach a collective agreement.

The Panel found that the Employer committed an unfair labour practice because the Employer closed the school as a result of the Union not accepting its proposal.

The Panel denied the Union's request for costs and its request to have the school reopened. However, the Panel ordered the Employer to pay the Union's bargaining costs and ordered a further hearing on the issue of the remedy for the affected employees. *Held:* Union's application allowed.

Kootenay Veneer Ltd., BCLRB No. B371/2000 — The IWA, Local 1-423 alleged the Employer committed various unfair labour practices. It sought various remedies including remedial certification. The Employer did not attend the hearing, leaving the Union's evidence uncontradicted, and the Panel found the Employer had failed to establish its actions were not motivated by anti-union sentiment.

When considering whether to grant a remedial certification, the Board assesses whether a union would have achieved majority support. Where the union organizing campaign is disrupted at a critical, early stage, it is appropriate to give more weight to factors such as the seriousness of the employer interference, the total impact of the conduct and the specific nature of the employer and employees than would be applied in cases where the organizing drive had a chance to gain momentum. This was an appropriate case for a remedial certification because of the severe and drastic unfair labour practices which involved discharge of employees active in the organization campaign and employer threats to close the plant. Although Certain Employees presented a petition against remedial certification, the Panel was unable to attach weight to the petition in the absence of evidence as to the circumstances under which the signatures on the petition were

obtained. The Panel also ordered the Employer to provide a bulletin board for the Union; to provide the Union access to the plant to maintain the board and to meet with employees on their own time in the lunch room; and to post and mail the Board's decision to the employees. These conditions were ordered in place until a collective agreement was in place or the Union's bargaining rights were extinguished. *Held:* Union's application allowed.

Fabkote Industries Ltd., BCLRB No. B385/2000 — The Employer alleged that its employees had voluntarily resigned their employment when their demand for a wage increase was not met. The Painters, Local No. 138 alleged that the Employer refused to continue to employ them. The Panel applied the arbitral test for whether an employee has voluntarily quit: the act of quitting must be voluntary and encompasses both a subjective intention to leave one's employment and some objective evidence manifesting an attempt to carry out that intention. The Panel found on the evidence that there was neither a subjective intention to quit nor any objective evidence manifesting an attempt to resign. While the Employer believed the employees would walk off the job if their demand was not met, it acted in anticipation of, and not in the face of, an actual resignation when it refused to continue to employ them. That refusal occurred after the Union had commenced an organizing drive and was accordingly captured by Section 6(3) of the Code. The Employer did not have proper cause for refusing to continue to employ the employees. In addition, the Union's membership evidence demonstrated the requisite support for automatic certification. *Held:* Union's application granted. Employees reinstated and certification granted.

Unfair Labour Practices — Union Misconduct

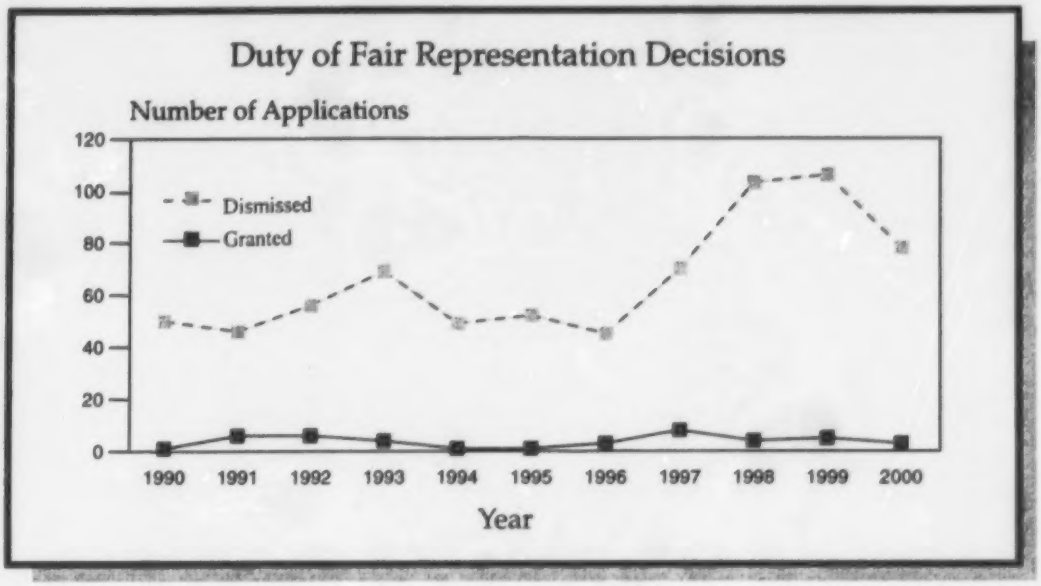
CWS Industries Ltd., BCLRB No. B347/2000 — IUOE, Local 115 applied for certification under Section 18 with sufficient membership for automatic certification. CWS opposed the application on the basis that Local 115 had obtained membership support through coercion and intimidation contrary to Section 9.

CWS alleged an employee had told certain employees that if they delayed taking out membership until after certification, they would likely face a higher initiation fee of $500. Although the employee later made some attempt to back off from that statement, his attempt fell short of what was required to set the record straight. The Panel concluded that a reasonable person would have perceived the employee to be a Local 115 organizer and the employee's statement could reasonably have been perceived as intimidating and coercive.

There were 81 employees in the proposed bargaining unit and the statement had been addressed to five or six employees, only one of which had actually signed a card. While there was some suggestion that the comments had spread as "rumour" to other employees, the Panel concluded that the initial statements were not of such force and effect that the employee ought to be held responsible for any ripple effect that may have occurred. At some point employees have an obligation to make inquiries to determine whether rumours are true. In the circumstances, only the single membership card was to be discounted. Local 115 had adequate support for automatic certification. *Held:* CWS's Section 9 application allowed in part; Local 115's application for certification granted.

Securiguard Services Limited, BCLRB No. B261/2000 — The Employer complained under Section 7(1) that IWA organizers attempted to persuade an employee to join the Union during working hours at his place of employment. It argued that the only time non-employee organizers are permitted on site without an employer's consent is if the employees reside on site and the Board directs access. The Panel found that the consent referred to in Section 7(1) relates not to access in the sense of entry, but consent to persuasive activity at the defined location. Contact was made on a public sidewalk where the employee was posted as a security guard. If the place of contact is a place of employment, union organizers may nonetheless have an independent right to be there if they are on public property.

The Union argued that the employee was not contacted at a place of employment. The Panel agreed that the sidewalk was not an area



exclusively reserved for the Employer's employees and that the Employer had no right to control access to the sidewalk. However, "the employer's place of employment" refers to the workplace where the Employer employs employees. The sidewalk where the security guard was on patrol was therefore a place at which an employee works. Because he was on duty at the time of the contact, there was an attempt to persuade at a place of employment during working hours, in contravention of Section 7(1). *Held:* Employer's application granted.

Duty of Fair Representation — General

Fred Bauer, BCLRB No. B157/2000 — Bauer alleged the Steelworkers Union breached Section 12 when it declined to pursue a grievance regarding his removal from bus driving duties by Fording Coal.

The Union was aware of five complaints submitted to the Employer regarding Bauer's driving. The Panel observed that the complaints lacked specifics and reported no accidents, infractions or other such problems. More importantly, in regard to the Union's investigation, the Union had at the very least an obligation to seek Bauer's response to the allegations raised against him. While a union may be concerned to protect the identity of complainants, the Union made its decision before giving Bauer a chance to respond to the allegations and thus failed to conduct a complete investigation. This arbitrary and perfunctory conduct was prohibited by Section 12 and, as a remedy, the matter was ordered to arbitration. *Held:* Complainant's application granted.

Peter Archer, BCLRB No. B468/2000 — The Complainant applied under Section 12 of the Code seeking a determination that the Union failed to represent him in pursuing a grievance. The CAW, Local 111 took the position that it should not be named in relation to the complaint. The CAW is the successor union to ICTU, Local 11.

A union which conducts a successful raid has a duty to ensure that all existing grievances in the grievance procedure at the time of certification are brought to a conclusion on the basis of the *Rayonier* principles: *Jito Sandu. Held:* Complaint dismissed both because it was untimely and on the merits.

INTERNAL UNION AFFAIRS

Natural Justice

Daniel A. Goy, BCLRB No. B3/2000 — Goy brought a complaint against the IBEW under

Section 10. Goy was a member of the TWU and had honorary withdrawal membership status with the IBEW. The IBEW annulled his honorary status after it found him guilty, following a Trial Board hearing, of actively encouraging IBEW members to support the TWU in a raid.

The Board set aside this result on two grounds. First, the Trial Board denied Goy's request for an adjournment, although Goy's witnesses were not available for the hearing. The Panel found the witnesses' unavailability was legitimate and could have been accommodated by the Trial Board, with no prejudice to the IBEW. Second, Goy had a minor role in the raid efforts — not the instrumental or active role asserted in the charges and before the Trial Board. Goy's witnesses' evidence was material and the charges had serious consequences for Goy. In these circumstances, the denial of an adjournment due to the unavailability of those witnesses breached procedural fairness.

Without determining whether the Trial Board's decision that Goy was not entitled to be represented by legal counsel at the hearing violated natural justice, the Panel noted that Section 10 gives rise to a right to legal counsel in the context of serious matters such as suspension, expulsion or removal from office (*Coleman and Leany, Boe* v. *Hamilton*). The present case was of a serious nature because revocation of Goy's honorary status was analogous to an expulsion from membership. *Held:* Goy's application granted.

United Brotherhood of Carpenters and Joiners of America, Local 1998 and United Brotherhood of Carpenters and Joiners of America, Local No. 1237, BCLRB No. B77/2000 — Leave for Reconsideration denied in BCLRB No. B323/2000 — These applications arose out of a purported merger and dissolution of Local 1237 of the Carpenters into Local 2397 and Local 1998. These applications were consolidated because of the overlapping factual and legal issues. The Locals and the International sought various declaratory or injunctive relief pursuant to Sections 10 and 37 of the Code.

The Board noted its limited statutory oversight of the internal affairs of unions under Section 10 *(Cal Kinsey; Fred Newart)* and observed that the requirements of natural justice under Section 10 vary depending upon the circumstances of the case, the nature of the inquiry, and the seriousness of the issue *(Marilyn Coleman)*. The most significant issue here was the inadequacy of the notice to the Locals at the first level before the General President made his decision on the dissolution and merger. The consequences of a merger and dissolution did not merit a greatly relaxed standard given the importance of the majoritarian principles underlying the acquisition and transfer of bargaining rights under the Code. The breach of natural justice was not cured by the appeal process given the failure of the General Executive Board to offer an opportunity to cross-examine on issues of material fact. In the absence of any reasons, the Board could not conclude that the issues raised on appeal received a fair review so as to cure the original breach *(Future Inns)*. In the result, it was unnecessary for the Panel to consider the Section 37 applications.

The Board set aside the decision of the General Executive Board which upheld the General President's decision to dissolve Local 1237 and to merge it into Locals 1998 and 2397. As a consequence, Local 1237 remained as a trade union for purposes of the Code; remained as the certified bargaining agent for the School District; and remained as the voluntarily recognized bargaining agent for those employers with whom it held bargaining relationships. *Held:* Local 1237's Section 10 application granted.

Financial Documents

Tohill and Daulat, BCLRB No. B142/2000 — Two union members applied under Section 151 seeking an order that IATSE, Local No. 348 be required to mail its 1998 financial statement to them and all other Union members. The Union had provided by mail a copy of the statement of opinion of its auditor and had allowed members to review the complete statements at its office, but refused to permit copies to be taken from its office.

While various methods of making financial statements available without cost to the requesting member may satisfy Section 151 (e.g., inclusion in a newsletter), the arrangements made by the Union did not comply with the Code as no

"copy" had been made "available" in response to requests made by the applicants. The existence of a labour dispute provided no justification for withholding the financial statements. Compliance with Section 151 was mandatory and, in any event, a member wanting to make a financial statement available to an employer could attend at the Union office and copy the relevant information by hand.

The Union was ordered to mail copies of its financial statements to the applicants' home addresses. The panel declined to order circulation to every member as only the applicants had requested personal copies. The practice of the Board under Section 151 is to require unions to forward financial information to members upon demand. *Held:* Members' application allowed.

Religious Exemptions

Deborah Lynn LaRoy, BCLRB No. B94/2000 — LaRoy sought reconsideration of BCLRB No. B464/99 in which her Section 17 application for exemption from membership based on religious convictions or beliefs was granted but not backdated to the start of her employment.

The onus is on the applicant to provide, in her application, the reasons why she seeks an exemption and the reasons for the date from which she says the exemption should be granted. As LaRoy herself acknowledged, she did not provide the original panel with an explanation for why she delayed her Section 17 application, although she did say that she wanted the exemption to be retroactive to the first day of her employment. The Panel determined the original panel had made the dues exemption retroactive to a reasonable date and found no basis to interfere with the original decision. *Held:* Applicant's application for reconsideration dismissed.

MEDIATION AND DISPUTE RESOLUTION

Horizon Operations (Canada) Ltd., BCLRB No. B138/2000 — The Employer applied under Section 78 for last offer votes to be conducted in various bargaining units. The Unions, the CEP, Local 2000 and GCIU, Local 25-C, opposed the applications on the basis that there were flaws in the last offers and that the votes should await the outcome of unfair labour practice complaints currently before another vice-chair of the Board. The Employer argued that the panel had no discretion not to order the requested votes under Section 78. The panel held that the Board's discretion is limited to a fairly narrow review of the last offer vote application, and the Board generally takes a "hands-off" approach. However, where the unfair labour practice complaints were connected to the last offer vote applications, the Board would not turn a blind eye to the complaints. The panel granted most of the applications but made various orders respecting the conduct of the vote in light of the complaints. *Held:* Employer's applications for last offer votes granted subject to directions regarding the conduct of the votes.

PRACTICE AND PROCEDURE

Filing Deadlines

Board of School Trustees of School District No. 36 (Surrey), BCLRB No. B492/2000 — CUPE, Local 728 applied for reconsideration of BCLRB No. B296/2000 wherein the Board dismissed its Section 99 application on the basis that it was untimely. The application was received at 4:25 p.m. on the final day for filing. In accordance with the Board's practice as set out in Rule 5(5), the application was date-stamped as being received the next working day, and the Employer subsequently raised a timeliness objection. The Union had not made arrangements prior to the 4:00 p.m. deadline for filing to receive a short extension of time because it was unaware that the Board's close of business had been changed in 1998 from 4:30 p.m. to 4:00 p.m. The Original Panel found that there were not compelling reasons for granting an extension of time, and dismissed the Union's application. It based this conclusion in part on the assumption that the 1998 Notice of the Board's change of hours had been publicized to the labour relations community.

The Reconsideration Panel found that the Notice had not in fact been publicized, and therefore the Board could not do otherwise but grant an extension to 4:30 p.m. In addition, it

did not endorse the approach taken by the Original Panel to the issue of timeliness in the circumstances of the case. The Panel confirmed that with the issuance of this decision, the change in Board hours has been publicized. Written material can only be filed with the Board during its regular hours (8:00 a.m. to 4:00 p.m., Monday to Friday), unless special arrangements have been made ahead of time with the Registrar, Deputy Registrar or Case Administrators. *Held:* Union's application for reconsideration allowed; original decision set aside.

Revocation Forms

Strata Corp. N-29 and Strata Corp. N-51 doing business as Inn West-Kirkwood Inn, BCLRB No. B251/2000 — The B.C. Council of Carpenters applied for reconsideration of BCLRB No. B205/2000 wherein the Board cancelled its certification. The Original Panel had ordered an IRO to conduct an investigation in connection with Certain Employees' application for revocation because two revocation forms (Form 33A) appeared to have the name of the Union completed by someone other than the person who signed the form. The IRO Report was circulated to the parties and all parties made submissions. On reconsideration, the Union argued, among other things, that the Board's practice is to reject membership cards with different ink and the same standard should apply to revocation forms.

The Panel found there had not been a denial of natural justice. The Panel clarified that Form 33A revocation forms are checked in the same fashion as membership cards: *W.G. Enterprises,* BCLRB No. B308/96. The Panel stated that it is not common practice to reject membership cards because of different coloured ink, although a Vice-Chair may order an IRO investigation where there is a concern about different coloured ink or different handwriting. *Held:* Union's application for reconsideration denied.

Interim Orders

Pacific Press, a Division of Southam Inc., BCLRB No. B430/2000 — The CEP, Local 2000 sought reconsideration of an interim order, for which written reasons were provided in BCLRB No. B301/2000, and applied under Section 143 for a declaratory opinion that the Interim Order was void.

The original panel had granted the Employer's application for the interim order in response to its complaint that the Union was engaged in an illegal strike. In general, the Board does not grant leave to reconsider interim rulings and the interim order in this case raised neither a question of jurisdiction nor the prospect of irreparable harm. Further, the interim order expired when the decision on the merits was rendered in BCLRB No. B263/2000. The Board may make an exception to its policy of not granting leave to reconsider academic matters if the application raises serious issues of law and policy under Part 5 of the Code. No such issues arose in this case. Although the issues in this dispute were therefore academic, the Board observed that a discussion of the broader policy issues of when and how interim orders are issued in expedited matters may be useful. The Board will involve the public, through appropriate representatives, in that discussion. *Held:* Union's application for reconsideration dismissed.

Standing

John Duncan, BCLRB No. B130/2000 — Duncan sought reconsideration of BCLRB No. B338/99, which dismissed his complaints under Sections 11, 54 and 139 of the Code alleging that his Employer, Canada Safeway, had failed to bargain with his Union, RWU, Local 580, in good faith and challenging a settlement agreement entered into by the Union and the Employer. The original panel decided that Duncan did not have standing to challenge the settlement agreement or to bring an allegation of bad faith bargaining.

The reconsideration panel decided to consider afresh the issue of standing. The panel noted that an employee, although affected by the terms, is not a party to union-employer agreements, and does not normally have standing to challenge the validity of the agreement under Sections 11, 54 or 139 the Code. The exception to the rule is set out in *Armscon Enterprises Ltd.* Duncan relied on the second *Armscon* test: where the Union and the Employer are not

sufficiently arms-length or adversarial. The panel noted that trade-offs do occur in collective bargaining and that not every individual or group of employees will be satisfied with the outcome. However, this is not evidence of bad faith bargaining or a lack of a sufficiently arms-length or adversarial relationship between the union and the employer. On the facts of the case, the panel found that Duncan did not meet the narrow circumstances for granting standing under the *Armscon* exception. *Held:* Leave for reconsideration granted; application for reconsideration dismissed.

Reconsideration — Extension of Time

John Robertson, BCLRB No. B224/2000 — Robertson applied pursuant to Section 140(1) for an extension of time in which to file a Section 141 application for reconsideration of a decision on a Section 99 application without filing the application for leave and reconsideration. The Employer argued, among other things, that the Board does not have jurisdiction to extend the 15-day time limit for filing reconsideration applications. The Panel stated that a party seeking an extension of time in which to file a reconsideration application must make its submissions regarding its leave request and the merits of the reconsideration application at the same time as its application for an extension of time. The Panel noted that it is unaware of the Board having confirmed this approach in any earlier decision. Therefore, it reserved on the Employer's objection and ordered Robertson to file his complete section 141 application within a specified time. *Held:* Reserved; Robertson to file section 141 application.

Statutory Declarations

Norter Enterprises Ltd. (Shoppers Drug Mart No. 219), BCLRB No. B174/2000 — The UFCW, Local 1518 applied for reconsideration of BCLRB No. B107/2000, in which an original panel found that a pharmacist was an employee in the bargaining unit for the purposes of casting a ballot in a decertification application. The Union's application added some material facts not evident on the face of the decision, and the Union in its application offered to provide a statutory declaration "if requested by the Board". The reconsideration panel stated that an offer to supply a statutory declaration upon request does not amount to compliance with Rule 29(2), and that it is for a party to determine whether a statutory declaration ought to be filed in support of its application. The Board is not prepared to step in and make such legal and/or strategic determination on a party's behalf. As the Union's application was predicated on material facts not apparent on the face of the original decision and no statutory declaration accompanied its application, the application was dismissed for non-compliance with the Rules. *Held:* Union's application for reconsideration dismissed.

IV.
Judicial Review

IV. Judicial Review

JUDICIAL REVIEW SUMMARIES

Arbitrator's Remedial Jurisdiction

1. ***PCL Constructors Pacific Inc.* v. *International Union of Operating Engineers, Local 115, and Labour Relations Board of British Columbia*** (22 June 2000), Vancouver Registry No. A993344 (B.C.S.C.) Powers J.

   PCL sought judicial review of Board Decision No. B327/99. In that decision, a reconsideration panel overturned an earlier decision, B208/98. In B208/98, an original panel had allowed PCL's application under Section 99 of the Code and set aside, in part, an arbitration award in which the arbitrator found that PCL had paid its employees in excess of the amount required under the collective agreement, but further found that there was no monetary remedy available to PCL. The original panel found that the arbitrator had erred in requiring a contravention of a collective agreement as a precondition to any monetary award and remitted the issue of remedy with directions. The reconsideration panel overturned the original panel, holding that under Section 89 an arbitrator is not entitled to award a remedy in the absence of a breach of a collective agreement.

   The Court held that as Section 89 of the Code is a jurisdictional-limiting provision, the Board's interpretation of the provision should be subject to judicial review at the standard of correctness. The Court further found that properly interpreted Section 89 conferred upon an arbitrator the authority "to provide a final and conclusive settlement of a dispute, not simply a final and conclusive settlement of a contravention of a collective agreement." It held that Section 89 should be interpreted broadly so as to permit the imposition of a monetary remedy in the absence of a breach of a collective agreement. The Court set aside the reconsideration panel's decision and remitted the matter to the Board with respect to the remaining issues relevant to remedy. *Held:* PCL's application for judicial review granted; Board decision No. B327/99 quashed.

Arbitral Review

2. ***Corporation of the City of Kelowna* v. *Labour Relations Board of British Columbia and Canadian Union of Public Employees, Local 338*** (23 March 2000), Supreme Court of Canada Registry No. 27315, Gonthier, Binnie and Arbour JJ.

   The City of Kelowna applied for leave to appeal a judgment of the Court of Appeal holding that no breach of natural justice arises from the Board's decision to remit a grievance to the original arbitrator where an arbitration award is overturned under Section 99 for error of law. *Held:* Employer's application for leave to appeal dismissed.

3. ***Pacific Press, a Division of Southam Inc.* v. *Graphic Communications International, Local 25-C*** (12 July 2000), Vancouver Registry No. A981527 (B.C.S.C.) Loo J.

   The Petitioner employer sought judicial review of a Board decision arising from a review of an arbitration award under Section 99 (BCLRB No. B84/98, upheld on reconsideration, BCLRB No. B197/98). The Board had referred a matter back to the arbitrator on the basis that there was an implied Code principle of union official immunity from discipline. The issue was whether the Board's finding of this implied Code principle was patently unreasonable.

The Court began by noting that, under Board policy, decisions of an arbitrator in answering the *Wm. Scott* questions in a discipline case are generally not open to review under Section 99. While the Board found the issue of union official immunity to be a matter of the law of the statute (i.e., the Code), the Court could find no indication in the Code that that union officials should be given some form of immunity from discipline. The Court did not accept the Board's analysis that, because the principle is "so inextricably connected to the just and reasonable cause requirement", it reaches the level of an implied principle of the Code. It found that the Board could not expand its "strictly limited jurisdiction in reviewing arbitration awards" by deciding or identifying which principles are implied terms of the Code.

In the Court's view, the doctrine or principle that union officials are afforded a limited immunity from discipline flows from the law of the contract, rather than the law of the statute. While the principle of union official immunity from discipline is one of the considerations — "perhaps an integral part of the inquiry" — in assessing whether the employer had just and reasonable cause for some form of discipline, that does not mean it is a principle implied in the Code. It may be that the principle is "inextricably connected to the just and reasonable cause requirement". But, in the Court's view, "no matter how important or fundamental the Board may consider certain principles of industrial relations, without an expression of legislative intent, those principles cannot be said to be implied terms of the Code". *Held:* Employer's application granted. Board decision Nos. B84/98 and B197/98 quashed.

4. ***Elkview Coal Corp.* v. *United Steelworkers of America, Local Union No. 9346, Labour Relations Board of British Columbia, and Dalton Larson*** (15 March 2000), Vancouver Registry No. A991562 (B.C.S.C.) Melnick, J.

In BCLRB Nos. B423/98 and B202/99 the Board upheld a preliminary arbitration award in which an arbitrator concluded that a dispute as to whether it was an implied term of the collective agreement that the benefit plan obtained by the Employer would apply equally to all employees irrespective of sexual orientation was an arbitrable issue.

The Employer applied for judicial review arguing that the arbitrator had erred in finding that he had jurisdiction to hear the Union's grievance and that the Board had exceeded its jurisdiction in upholding the arbitrator's erroneous finding and by applying the "genuine effort" test in reviewing the award under Section 99. The Court found that the determination made by the arbitrator was not one of jurisdiction, but rather of arbitrability (i.e., whether the facts underlying the grievance were contemplated by the collective agreement). Given that the arbitrator's conclusion was not jurisdictional in nature, the Board had properly applied the "genuine effort" standard of review and the Board's decisions were not patently unreasonable. *Held:* Employer's application for judicial review dismissed.

Common Employer

5. ***White Spot Limited* v. *British Columbia Labour Relations Board and National Automobile, Aerospace and Agricultural Implement Workers of Canada (CAW-Canada), Local 3000*** (17 February 2000), Supreme Court of Canada Registry No. 27249, L'Heureux-Dubé, Bastarache and LeBel JJ.

The Employer sought leave to appeal from lower court decisions in respect of its unsuccessful application for judicial review of BCLRB No. B352/96. In that decision the Board deemed the Employer, a corporate franchiser, and Gilley Restaurants, a franchisee, a common employer for purposes of the Code. *Held:* Application for leave to appeal dismissed (without reasons).

Replacement Workers

6. ***Office & Professional Employees' International Union, Local 378* v. *Labour Relations Board of British Columbia, and British Columbia Automobile Association*** (16 June 2000), Vancouver Registry No. A991490 (B.C.S.C.) Fraser J.

   The OPEIU sought judicial review of Board decision Nos. B94/99 and B277/99, in which the Board found that three individuals who worked at a struck place of operations and also at other places of operations were not caught by the replacement worker prohibition found in Section 68(1)(b) of the Code. The Court found that the Board had wrongly interpreted and applied the section by reference to the extent of the individuals' work at the struck location rather than by reference to the work they performed at BCAA's other places of operation. The Court concluded that the test articulated and applied by the Board was inconsistent with the express wording of the provision and with the underlying thrust of Section 68 and thus found the Board decisions to be patently unreasonable. *Held:* Union's application granted; Board decisions Nos. B94/99 and B277/99 quashed.

7. ***Bakery Confectionery and Tobacco Workers' Local 468* v. *Labour Relations Board of British Columbia and Weston Bakeries Limited-Boulangeries Weston Limitee*** (11 February 2000), Vancouver Registry No. A992142 (B.C.S.C.) Koenigsberg, J.

   In BCLRB No. B205/99 a reconsideration panel of the Board overturned BCLRB No. B447/98. The reconsideration panel found that the original panel erred in dismissing the Employer's application for decertification under Section 33(1), and ordered the Union's certification cancelled. The Union sought judicial review of the reconsideration decision, arguing that the Board had exceeded its jurisdiction in granting leave and/or by interfering with the original panel's findings of fact.

   The Court found that the question as to whether to grant leave is completely within the jurisdiction of the Board and that the decision to grant leave in the case under review was not patently unreasonable. The Court noted that there is no requirement for the Board to give reasons for granting leave or to hold a separate hearing for the purposes of determining whether leave should be granted. The Court further found that a reconsideration panel has the jurisdiction to substitute its conclusions as to reasonable inferences from established facts for those drawn by an original panel. Finally, the issue of the appropriate test to be applied in determining whether an employer has met the requirements for decertification established under Section 33(1) is a matter of policy and principle, and the reconsideration panel's findings in this respect were not patently unreasonable. *Held:* Union's judicial review application dismissed.

Duty of Fair Representation

8. ***Atmajit Singh Aujla* v. *British Columbia Labour Relations Board, Industrial Wood and Allied Workers of Canada, Local 1-3567, International Forest Products, and Sauder Industries Limited*** (29 June 2000), Vancouver Registry No. A991688 (B.C.S.C.) Baker J.

   Aujla sought judicial review of Board decision Nos. B447/97 and B310/98, in which the Board dismissed his Section 12 complaint against the IWA, Local 1-3567. Aujla's complaint centered on the IWA's decision not to pursue his seniority grievance to arbitration. Aujla argued that the Board had been patently unreasonable in failing to consider a number of factors and in finding that the IWA had fulfilled its duty of fair representation.

   The Court found that it was implicit that the Board had been aware that Section 12 was the sole venue of recourse available to Aujla in the circumstances and that the Board was cognizant of the fact that, as a matter of seniority, Aujla's complaint involved a critical job interest. The Court further found that the Board was entitled to determine Aujla's complaint without an oral hearing given that only immaterial

facts were in dispute. In response to Aujla's argument that the Board found that the IWA had discharged its duty of fair representation simply by obtaining a legal opinion on the merits of his grievance, the Court found that the Board had cited the obtaining of the legal opinion as only one of various actions taken by the IWA in investigating and evaluating the grievance. In response to Aujla's argument that the Board had failed to consider whether the IWA had discriminated against Aujla, the Court found that Aujla's application to the Board had raised no such allegation. The Board could not be said to have been patently unreasonable in failing to consider a complaint that was never advanced.

Finally, the Court dismissed the argument that the Board had been patently unreasonable in declining to investigate and evaluate the merits of Aujla's grievance. A union does not act arbitrarily or with bad faith simply because it declines to pursue a grievance which has some prospect or even probability of success. Although in some instances the relative merit of a grievance may be relevant to adjudication of a Section 12 complaint, the merits of a grievance will usually be irrelevant. There was nothing in the circumstances of this case such that the Board's refusal to go into the merits of the grievance itself could be considered patently unreasonable. *Held:* Aujla's petition for judicial review dismissed.

Constitutional Jurisdiction

9. ***Westbank First Nation, also known as the Westbank Indian Band, as represented by Robert Louie, Chief, Larry Derrickson, Clarence Clough, Harold Derickson, and Carol Derickson, Councillors, and the Westbank First Nation Development Co. Ltd., formerly known as the Westbank Indian Band Development Company Ltd. v. British Columbia Labour Relations Board, British Columbia Government Employees' Union, British Columbia Nurses' Union, The Ministry of the Attorney General of British Columbia, and The Attorney General of Canada*** (2 March 2000), Vancouver Registry No. CA023923 (B.C.C.A.) Prowse, Ryan, and Mackenzie JJ.A.

The Employer took the position that its operations fell under federal jurisdiction by virtue of Section 91(24) of the *Constitution Act, 1982* ("Indians, and Lands reserved for the Indians"). In BCLRB Nos. B314/95, B337/95, B341/95, B298/96 and B17/97, the Board held that the Employer's operations fell within provincial jurisdiction and were subject to certification under the Code. At the Supreme Court level, Tysoe J. dismissed the Employer's application for judicial review on the basis that the Board had correctly determined the question of constitutional jurisdiction. The Employer appealed from the judgment of Tysoe J. The Court of Appeal held that the Employer's operations were properly within provincial labour relations jurisdiction for the reasons given by Tysoe, J. *Held:* Employer's appeal dismissed.

Applications for Judicial Review which were heard by the Court in 2000 and for which decisions are pending:

1. None.

Applications for Judicial Review or Appeals filed in 2000 and not yet heard by the Court:

1. ***Andy Bezanson, Melvin Henderson, Keith Jacobson, Jock McGrandle, Peter McQuade and Robert Murdock v. Labour Relations Board of British Columbia, Transcontinental Printing Ltd., Dolphin Delivery Ltd., Southam Inc., and Communications, Energy and Paperworkers Union of Canada, Local 2000*** — Judicial review of unnumbered letter decision dated May 16, 2000 (Vancouver Registry No. L001353). Hearing dates not set. Subject matter: stay of Board proceeding and Board's jurisdiction.
2. ***Fraser Lake Sawmills v. Industrial Wood and Allied Workers of Canada, Local 1-424*** — Judicial review of BCLRB No. B351/2000

(Vancouver Registry No. L002665). Hearing dates not set. Subject matter: arbitral review.

3. ***United Food and Commercial Workers Union, Local 1518 v. Labour Relations Board of British Columbia and P.G. Restaurant (Mama Panda Buffet)*** — Judicial review of BCLRB No. B403/2000 (Vancouver Registry No. L003245). Hearing dates not set. Subject matter: ordering new decertification vote due to non-segregation of a challenged ballot.

4. ***Inderjit Atwal et al. v. Labour Relations Board of British Columbia*** — Judicial review of BCLRB Nos. B315/2000 and B249/2000 (Vancouver Registry No. L003212). Matter to be heard April 25 and 26, 2001. Subject matter: Section 12 complaint.

5. ***Mr. David Askey v. Ambulance Paramedics of British Columbia Canadian Union of Public Employees, Local 873*** — Judicial review of BCLRB No. B459/2000 (Vancouver Registry No. L003343). Matter to be heard April 5, 2001. Subject matter: Section 12 complaint.

6. ***Elkview Coal Corp. v. United Steelworkers of America, Local Union No. 9346, Labour Relations Board of British Columbia, and Dalton Larson*** — Appeal by the Employer to the B.C.C.A. from the decision of the B.C.S.C. pronounced March 15, 2000 (Vancouver Registry No. CA026994). Matter to be heard June 4, 2001. Subject matter: arbitral review-arbitrability.

7. ***Atmajit Singh Aujla v. British Columbia Labour Relations Board, Industrial Wood and Allied Workers of Canada, Local 1-3567, International Forest Products, and Sauder Industries Limited*** — Appeal by Aujla to the B.C.C.A. from the decision of the B.C.S.C. pronounced June 23, 2000 (Vancouver Registry No. CA027509). Hearing dates not set. Subject matter: Section 12 complaint.

8. ***British Columbia Automobile Association v. Office & Professional Employees' International Union, Local 378 and Labour Relations Board of British Columbia*** — Appeal by the Employer to the B.C.C.A. from the decision of the B.C.S.C. pronounced June 16, 2000 (Vancouver Registry No. CA027404). Hearing dates not set. Subject matter: meaning of "ordinarily works" in Section 68.

9. ***Graphic Communications International Union, Local 25-C v. Pacific Press, a Division of Southam Inc. and The British Columbia Labour Relations Board*** — Appeal by the Union and Board to the B.C.C.A. from the decision of the B.C.S.C. pronounced July 12, 2000 (Vancouver Registry No. CA027535). Board's notice of abandonment filed September 8, 2000. Hearing dates for Union's appeal not set. Subject matter: union official immunity from discipline.

10. ***Carl Persall v. Laura Parkinson, Keith Bennett, Garry Worth, Edward Norman, The Estate Of Edward Norman, Linda Dennis, Sheila Hogan, Don Doerksen, Mike Evans, Frances Watters, Don Mcgill, Thomas Milne, Catherine McCreary, Jack Vlahovic, Ujjal Dosanjh, Andrew Petter*** — Civil proceeding (Chilliwack Registry No. S0011187). Trial date not set.

11. ***Juan Antonio Blanco-Arriba v. Labour Relations Board of British Columbia*** — Civil proceeding (Vancouver Registry No. L000979). Trial dates not set.

Judicial Review Cases Settled or Withdrawn in 2000

1. ***International Union of Operating Engineers, Local 115 v. Labour Relations Board of British Columbia and PCL Constructors Pacific Inc.*** — Union's application for judicial review of BCLRB Nos. B327/99 and B162/2000 (Vancouver Registry No. L001162). Notice of discontinuance filed August 14, 2000.

2. ***Highland Valley Copper v. United Steelworkers of America, Local No. 898 and Labour Relations Board of B.C.*** — Judicial review of BCLRB No. B298/98 (Vancouver Registry No. A982662). Notice of discontinuance filed February 8, 2000.

3. ***Campbell River/Nootka Community Health Council (Campbell River and District General Hospital) formerly Campbell River & District General Hospital Society and Health Employers Association of British Columbia* v. *British Columbia Nurses' Union and Labour Relations Board of British Columbia*** — Judicial review of BCLRB No. B289/98 (Vancouver Registry No. A990797). Notice of discontinuance filed February 9, 2000.

4. ***PCL Constructors Pacific Inc.* v. *International Union of Operating Engineers, Local 115, and Labour Relations Board of British Columbia*** — Appeal by the Union to the B.C.C.A. from the decision of the B.C.S.C. pronounced June 22, 2000 (Vancouver Registry No. CA027411). Notice of abandonment filed August 14, 2000.

5. ***PCL Constructors Pacific Inc.* v. *International Union of Operating Engineers, Local 115, and Labour Relations Board of British Columbia*** — Appeal by the Board to the B.C.C.A. from the decision of the B.C.S.C. pronounced June 22, 2000 (Vancouver Registry No. CA027466). Notice of abandonment filed August 18, 2000.

6. ***British Columbia Labour Relations Board and Keith Oleksiuk* v. *C.D. Lee Trucking Ltd. et al.*** — Appeal by the Board to the B.C.C.A. from the decision of the B.C.S.C. pronounced November 26, 1998 (Vancouver Registry No. CA025412). Consent order clarifying the scope of the original decision filed February 16, 2000. Appeal regarding remaining issues withdrawn February 25, 2000.

7. ***Juan Antonio Blanco-Arriba* v. *Her Majesty the Queen et al*** — Civil proceeding (Vancouver Registry No. C995195). Action discontinued as against all defendants except the Employer.

8. ***Juan Antonio Blanco-Arriba* v. *Labour Relations Board of British Columbia*** — Civil proceeding (Vancouver Registry No. S000556). Dismissed by consent order entered May 1, 2000.

V.
Statistical Tables

V. Statistical Tables

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Explanatory Notes to Tables

The following tables provide an analysis of the applications filed and disposed of in 2000. In some cases, statistics from 1999 and other years are provided for comparative purposes.

A number of changes have been made over the past few years in the statistical base used in some of the categories in Table 1. The changes have been summarized as follows for the convenience of users.

Complaints of Unfair Labour Practices

Prior to 1989, complaints under Sections 2 or 3 (now Sections 5 or 6) of the legislation were not broken down by sub-section. From 1989 on, complaints under each particular sub-section were counted as one complaint.

In 1996, the Board decided to revert to the pre 1989 method of counting these complaints. The change affects the statistics published as Sections 2, 3 and 4 of the *Industrial Relations Act* and Sections 5, 6, 7 and 9 of the *Labour Relations Code*. The following table displays the statistics as they were published and as they would have been under the pre 1989 method of counting (rev).

Type of Application	NUMBER OF APPLICATIONS OR COMPLAINTS									
	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
Other Unfair Labour Practice Complaints (ss. 5, 6, 7 and 9 of the *Labour Relations Code* or ss. 2, 3 and 4 of the *Industrial Relations Act*)	**1995**	**825**	**909**	**26**	**0**	**573**	**192**	**118**	**0**	**449**
	1995 (rev)	488	529	25	0	338	97	69	0	221
	1994	**899**	**831**	**9**	**0**	**586**	**136**	**100**	**0**	**362**
	1994 (rev)	513	467	9	0	326	74	58	0	176
	1993	**748**	**676**	**3**	**0**	**440**	**134**	**99**	**0**	**331**
	1993 (rev)	422	390	2	0	249	73	66	0	177
	1992	**416**	**345**	**0**	**0**	**205**	**108**	**32**	**0**	**176**
	1992 (rev)	228	185	0	0	112	54	19	0	83
	1991	**346**	**370**	**0**	**0**	**241**	**92**	**37**	**0**	**NP**
	1991 (rev)	187	199	0	0	135	44	20	0	
	1990	**386**	**388**	**5**	**0**	**220**	**100**	**63**	**0**	**NP**
	1990 (rev)	229	225	3	0	124	62	36	0	
	1989	**209**	**177**	**0**	**0**	**96**	**47**	**34**	**0**	**NP**
	1989 (rev)	123	118	0	0	61	36	21	0	

NP — Not Published.

For an Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship

Prior to 1989, an application regarding the inclusion or exclusion of employees from a bargaining unit was counted as one application for each in question. If the application was withdrawn, it was counted as one application regardless of the number of employees involved. From 1989 on, an application regarding the inclusion or exclusion of employees has been counted as one application.

For an Order or Opinion Pertaining to Applications Pursuant to Part 5 (Strikes, Lockouts, Picketing, etc.)

Prior to 1988, each application under Part 5 was counted as one application, regardless of the sections cited. One application could cover for example, a strike or a picket or a combination of both. From 1988 on, each section and sub-section of Part 5 has been counted as a separate application.

To File an Order in the Supreme Court

Applications to file orders in the Supreme Court were counted as applications for the first time in 1989. These applications had been processed by the Board/Council since 1974 but had not been registered or counted prior to 1989.

Stay Applications

These applications have been added to applications filed and disposed of in Table 1 for the first time in 1993. They are included in the Miscellaneous category. In previous years, these applications were not counted.

General Notes

For the convenience of users, the following is a brief description of some of the disposition codes used in Table 1.

- Applications and complaints granted include those where an order is issued, whether a regular order or a consent order. If an application is partially granted, it is included in this category.
- Applications and complaints dismissed include those where no violation is deemed to have occurred, where the application does not conform to statutory or regulatory time limits or where it is determined no further action is warranted.
- Applications and complaints not proceeded with include only those where the applicant has not supplied the Board with sufficient information to process the application. The application is returned but the applicant is free to reapply.
- Complaints that do not require a decision from the Board are designated settled even in those cases where the applicant submits a withdrawal.

It is important to note when using these statistics that the work content embodied in individual applications varies widely, both among different categories of applications and among applications in the same category. The work content of the administrative, investigative and decision-making functions can vary widely as well, from category to category and from application to application.

TABLE 1

Applications and Complaints Filed and Disposed of in 1999 – 2000

Type of Application	NUMBER OF APPLICATIONS OR COMPLAINTS									
	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
Complaints of Unfair Labour Practices										
Complaints Regarding Internal Union Affairs (s. 10)	**1999**	**19**	**24**	**4**	**0**	**6**	**0**	**14**	**0**	**5**
	2000	4	7	0	0	1	3	3	0	3
Complaints Regarding Duty to Bargain in Good Faith (s. 11)	**1999**	**57**	**53**	**0**	**0**	**33**	**11**	**9**	**0**	**15**
	2000	90	61	0	0	46	10	5	0	15
Complaints Regarding Duty of Fair Representation (s. 12)	**1999**	**230**	**228**	**96**	**0**	**21**	**5**	**106[1]**	**0**	**21**
	2000	199	196	85	0	30	3	78[2]	0	27
Other Unfair Labour Practice Complaints (ss. 5, 6, 7, 8 and 9)[3]	**1999**	**632**	**697**	**8**	**0**	**503**	**114**	**72**	**0**	**272**
	2000	518	544	5	0	380	104	55	0	234
Religious Exemption (s. 17)	**1999**	**22**	**21**	**3**	**1**	**0**	**16**	**1**	**0**	**0**
	2000	12	16	1	0	0	14	1	0	1
Certification Applications (ss. 18, 19 and 28)	**1999**	**523[4]**	**531**	**6**	**111**	**0**	**363[5]**	**51**	**0**	**462**
	2000	376[6]	379	1	83	0	263[7]	32	0	335

[1] 46 of the 106 dismissed complaints, filed under the *Labour Relations Code* were dismissed because no *prima facie* case was found.

[2] 22 of the 78 dismissed complaints, filed under the *Labour Relations Code* were dismissed because no *prima facie* case was found.

[3] **In 1996, the Board changed the method of counting complaints under Sections 5 and 6 of the *Labour Relations Code*. (See Explanatory Notes for details.)**

[4] 20 867 employees were included in the 523 certification applications filed in 1999. Five of these applications were filed jointly by more than one union.

[5] 10 730 employees were included in the 363 certifications applications granted in 1999. (One single certification application resulted in the issuance of two individual certifications; thus the total of certifications granted in 1999 amounts to 364). Nine of the certifications granted involving 1054 employees were processed under the 'raid' provisions of the legislation.

[6] 12 823 employees were included in the 376 certification applications filed in 2000. Five of these applications were filed jointly by more than one union.

[7] 10 520 employees were included in the 263 certification applications granted in 2000. Four of the certifications granted involving 3330 employees were processed under the 'raid' provisions of the legislation.

The estimate of employees per application is derived from the estimate on the union application. Variances do occur between the time of application and the time of disposal of the application. In case of applications filed, the estimate could include some multiple counting where more than one union applied to cover the same group of employees.

TABLE 1

Applications and Complaints Filed and Disposed of in 1999 – 2000 — *Continued*

Type of Application	Year	NUMBER OF APPLICATIONS OR COMPLAINTS								
		Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
Certification Variances (ss. 28 and 142)	1999	393	401	2	51	0	335	13	0	109
	2000	283	281	4	37	0	234	6	0	79
Certification Cancellations[1] (ss. 33 and 142)	1999	159	168	26	20	0	107	15	0	100
	2000	188	199	27	24	0	117	31	0	129
Cancellation of a Voluntary Recognition (s. 34)	1999	4	4	0	0	0	2	2	0	2
	2000	11	9	0	1	0	6	2	0	11
Permission to Alter Conditions of Employment (ss. 32 and 45)	1999	10	9	0	7	0	2	0	0	3
	2000	5	5	0	1	0	3	1	0	2
Alleged Unlawful Alteration of Employment Terms and Conditions (ss. 32 and 45)	1999	75	84	0	0	60	9	15	0	44
	2000	58	63	0	0	56	6	1	0	22
Declaration of Successor Status										
Successor Employer (s. 35)	1999	112	148	2	21	0	119	6	0	12
	2000	154	144	2	10	0	127	5	0	11
Successor Union (s. 37)	1999	55	111	1	9	0	99	2	0	1
	2000	94	81	0	3	0	74	4	0	4
Common Employer (s. 38)	1999	30	37	1	20	0	8	8	0	13
	2000	30	31	1	14	0	7	9	0	18
Accreditation Applications (s. 43)	1999	0	1	0	0	0	0	1	0	0
	2000	0	0	0	0	0	0	0	0	0

[1] See TABLE 3

TABLE 1

Applications and Complaints Filed and Disposed of in 1999 – 2000 — *Continued*

Type of Application	NUMBER OF APPLICATIONS OR COMPLAINTS									
	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
Accreditation Variances (ss. 43 and 142)	1999	46	42	0	2	0	40	0	0	0
	2000	51	56	1	1	0	54	0	0	0
Accreditation Cancellations (s. 142)	1999	0	0	0	0	0	0	0	0	0
	2000	0	0	0	0	0	0	0	0	0
Alleged Failure to Execute or Comply With a Collective Agreement (s. 49)	1999	17	13	1	0	8	2	2	0	3
	2000	17	17	1	0	11	3	2	0	6
First Collective Agreement (s. 55)	1999	25	24	0	0	9	0	0	15[1]	0
	2000	31	33	0	0	18	0	0	15[2]	0
Part 5 Applications (Strikes, Lockouts, Picketing, etc.) (ss. 57 to 70)	1999	139	118	0	0	67	33	18	0	41
	2000	169	183	0	0	101	58	24	0	83
Replacement Workers (s. 68)	1999	22	19	0	0	11	7	1	0	8
	2000	29	31	0	0	17	13	1	0	16
Essential Service Designations (s. 72)	1999	51	66	0	0	4	62	0	0	18
	2000	20	20	0	0	8	12	0	0	2
Last Offer Vote (s. 78)	1999	29	29	0	0	0	29[3]	0	0	1
	2000	38	38	0	2	0	36[4]	0	0	0

[1] For seven cases, the dispute was referred to binding arbitration. For seven cases, the parties were allowed to exercise their right to strike or lockout. In one case, the mediator reported out.

[2] For six cases, the dispute was referred to binding arbitration. For four cases, the parties were allowed to exercise their right to strike or lockout. In three cases, the union was decertified. For one case, the trade union's strike vote was set aside and therefore the Section 55 process was found not appropriate. In one case, the application was rescinded, as the *Labour Relations Code* requires a valid strike mandate.

[3] In 21 cases, the employees voted to reject the offer. In six cases, the employees voted to accept the offer. In one case, the employer withdrew the application before the vote was held. In one case, the parties settled before the vote was held.

[4] In 22 cases, the employees voted to reject the offer. In 13 cases, the employees voted to accept the offer. In one case, the employer withdrew the application before the vote was held.

TABLE 1

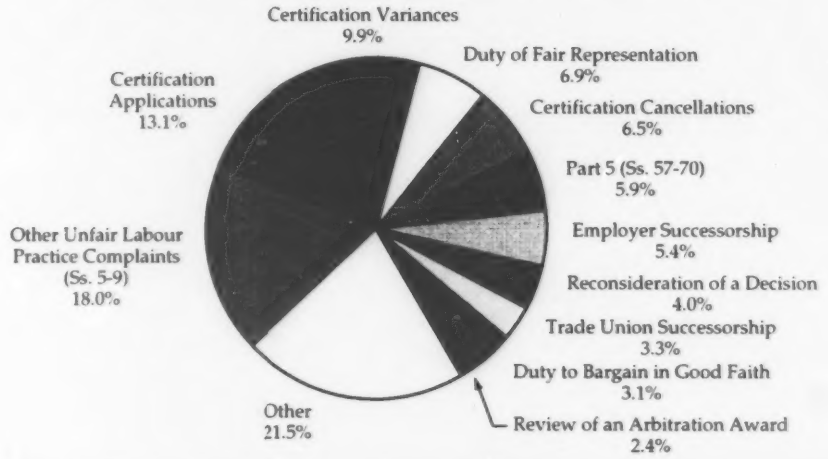
Applications and Complaints Filed and Disposed of in 1999 – 2000 — *Continued*

Type of Application	Year	NUMBER OF APPLICATIONS OR COMPLAINTS								
		Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
Review of Arbitration Award (s. 99)	1999	59	54	0	11	0	7	36	0	11
	2000	68	69	0	5	0	15	49	0	20
Interim Order (s. 133)	1999	23	22	0	11	0	5	6	0	8
	2000	14	13	0	6	0	4	3	0	7
File an Order in Supreme Court (s. 135)	1999	63	56	0	24	0	31	1	0	0
	2000	66	65	0	28	0	34	3	0	0
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship (s. 139)	1999	86	125	4	83	0	0	0	38[1]	37
	2000	83	75	5	43	0	0	0	27[1]	30
Reconsideration of a Decision (s. 141)	1999	138	150	0	9	0	22	119[2]	0	9
	2000	116	129	0	11	0	19	99[3]	0	14
Declaratory Opinion (Excluding Declaratory Opinions Pertaining to Part 5 of the Legislation) (s. 143)	1999	13	15	1	9	0	3	2	0	5
	2000	9	11	0	5	0	2	4	0	3
Miscellaneous	1999	125[4]	115[5]	9	11	39	34	22	0	27
	2000	140[6]	151[7]	2	24	51	50	24	0	41
TOTAL	1999	3158	3365	164	400	761	1465	522	53	1227[8]
	2000	2873	2907	135	298	719	1271	442	42	1113[9]

NOTE: The sections quoted are from the *Labour Relations Code* unless otherwise indicated.

[1] Ruling made.
[2] For 98 of the 119 applications dismissed, leave to apply was denied.
[3] For 79 of the 99 applications dismissed, leave to apply was denied. See Table 5.
[4] Includes 12 stay applications.
[5] Includes eight stay applications: six of which were dismissed and two of which were granted.
[6] Includes 19 stay applications.
[7] Includes 16 stay applications: 12 of which were dismissed, one of which was granted, and three of which were withdrawn.
[8] 1227 applications disposed of in 1999 were heard some time during the process. In 1999, the Board held 836 hearings (including 639 expedited hearings to deal with certification and decertification applications), some of which dealt with multiple applications and for some of which, the applications had not been disposed of by the end of 1999.
[9] 1118 applications disposed of in 2000 were heard some time during the process. In 2000, the Board held 690 hearings (including 492 expedited hearings to deal with certification and decertification applications), some of which dealt with multiple applications and for some of which, the applications had not been disposed of by the end of 2000.

Applications and Complaints Filed in 2000



Applications and Complaints Filed in 1999

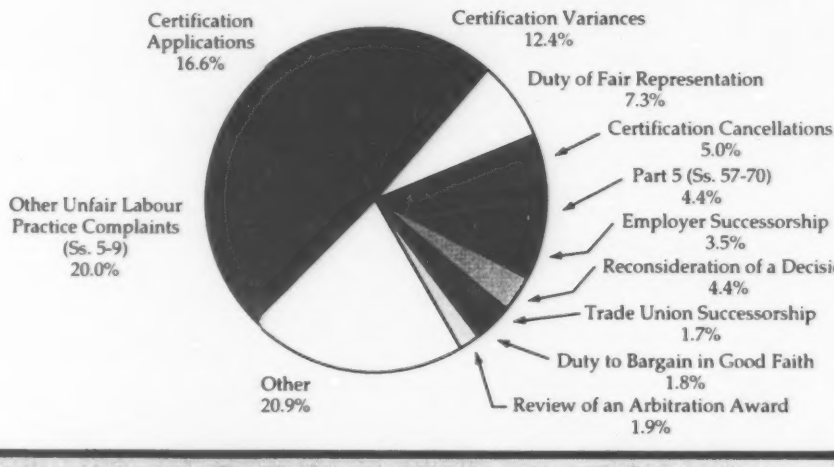


TABLE 1A

Certification Applications Granted in 2000 Analyzed by Industry

Type of Industry	Number of Certification Applications Granted	Number of Employees
Logging and Forestry	5	96
Mining (including Milling), Quarrying and Oil Wells	2	64
Fishing and Trapping	3	111
Manufacturing	36	1,543
Construction	32	273
Transportation and Storage	19	3,671
Communications and other Utilities	2	82
Wholesale Trade	4	54
Retail Trade	5	295
Finance and Insurance	3	110
Business Services	3	24
Government Services	2	29
Educational Services	3	87
Health and Social Services	97	1,442
Accommodation, Food and Beverage Services	11	555
Other Services	36	2,084
TOTAL	**263**	**10,520**

Certification Applications Granted in 2000 Analyzed by Industry

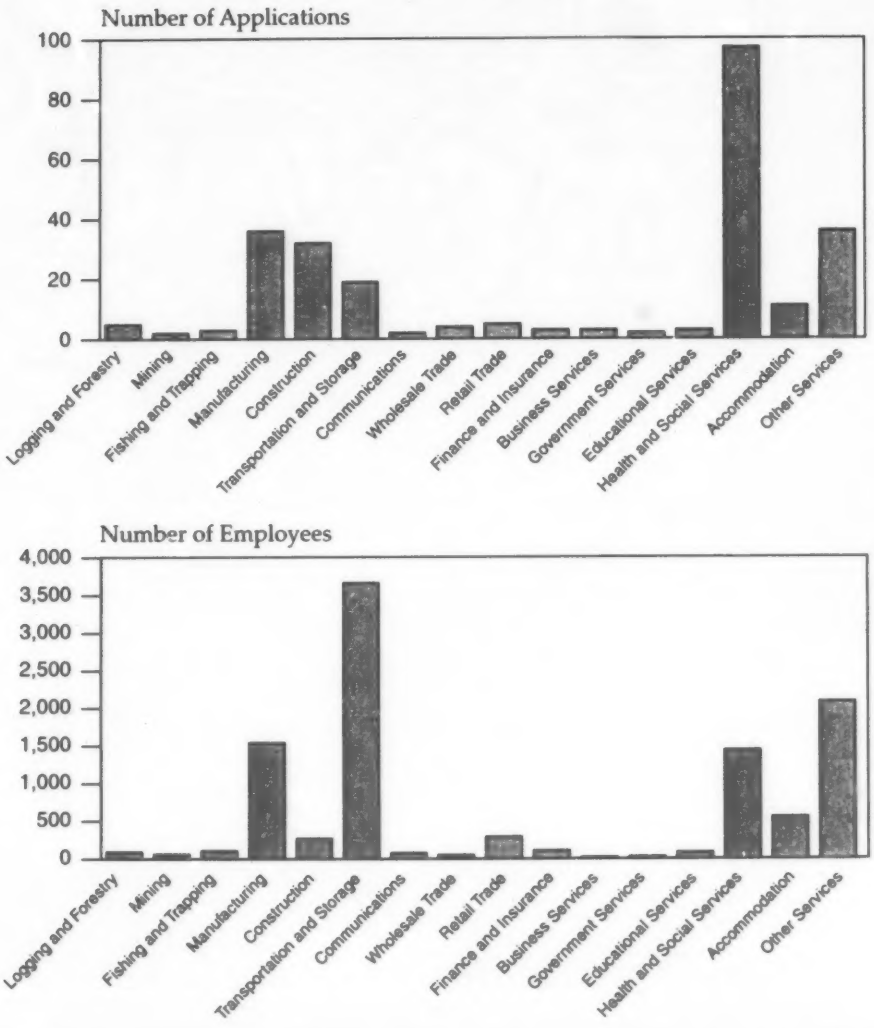


TABLE 1B

Certification Applications Filed and Granted in 2000 Analyzed by Union

UNION NAME (Names have been abbreviated. Where possible, the commonly used, shortened form appears.)	Number of Certification Applications Filed	Number of Certification Applications Granted
Boilermakers	1	1
Carpenters	9	5
CLAC	20	12
CISIWU	1	2
Electrical Workers (IBEW)	15	12
Elevator Constructors	1	0
Glaziers & Glass Workers	2	2
Iron Workers	3	3
Labourers	12	5
Machinists & Aerospace Workers	1	1
Operating Engineers (IUOE)	16	8
Painters (not including Glaziers 1527)	5	4
Plumbers & Refrigeration Workers	3	3
Sheet Metal Workers	2	1
CEP	7	5
Canadian Translators and Interpreters Guild (CWA)	4	1
IWA	39	27
PPWC	2	2
Marine Workers	0	1
Merchant Service	5	2
Owner-Operator Workers (COOWA)	2	0
Professional Associated Limousine Services Association	0	1
Seafarers	0	1
Teamsters	24	10
Amalgamated Transit Union (ATU)	2	1
Independent Drivers Association	1	1
Film Craftspeople (ACFC-CEP)	15	14
West Coast Backgrounders	15	0
Musicians	0	1
Service Employees (SEIU)	1	0
Service Workers	2	2
Hotel Employees	10	7
Health Sciences Association (HSA)	9	6
Hospital Employees Union (HEU)	21	21
Nurses (BCNU)	23	17
Firefighters	1	0
Graphic Workers	1	0
Telecommunications Workers (TWU)	1	1
CAW	22	15
Steelworkers	5	2

(continued)

TABLE 1B

Certification Applications Filed and Granted in 2000
Analyzed by Union — *Continued*

UNION NAME (Names have been abbreviated. Where possible, the commonly used, shortened form appears.)	Number of Certification Applications Filed	Number of Certification Applications Granted
Fishers (UFAWU-CAW)	1	1
Food & Commercial Workers (UFCW)	10	9
Retail Wholesale Union (RWU)	1	2
CUPE	8	6
OPEIU/OTEU	4	2
BCGEU	55	44
PEA	1	1
Single Employer Independent Union	2	1
TOTAL	**376**[1]	**263**[1]

[1] Adding the individual numbers in the column produces a larger number because some applications were filed jointly by more than one union.

TABLE 2

Certification Applications Decided in 2000

Applications	Granted	Dismissed	Total
Unorganized Employees	259	29	288
Organized Employees	4	3	7
TOTAL	**263**	**32**	**295**

Number of Employees	Granted	Dismissed	Total
Unorganized Employees	7,190	2,348	9,538
Organized Employees	3,330	546	3,876
TOTAL	**10,520**	**2,894**	**13,414**

TABLE 2A

Certification Applications Granted in 2000 by the Size of the Bargaining Unit

Number of Employees	Number of Certification Applications	Percentage of Certification Applications	Cumulative Percentage
1 to 10	118	44.9%	44.9%
11 to 20	51	19.4%	64.3%
21 to 30	24	9.1%	73.4%
31 to 40	12	4.6%	78.0%
41 to 50	9	3.4%	81.4%
51 to 60	11	4.2%	85.6%
61 to 70	12	4.6%	90.1%
71 to 80	6	2.3%	92.4%
81 to 90	1	0.4%	92.8%
91 to 100	6	2.3%	95.1%
101 to 200	9	3.4%	98.5%
Over 200	4	1.5%	100.0%
TOTAL	**263**		

TABLE 2B

Certification Applications Granted Between 1990 and 2000 by the Size of the Bargaining Unit

Year	Number and Percentage of Certification Applications						Total
	1 to 20 Employees		21 to 50 Employees		Over 50 Employees		
1990	181	72.4%	47	18.8%	22	8.8%	250
1991	173	70.9%	47	19.3%	24	9.8%	244
1992	130	66.0%	47	23.9%	20	10.1%	197
1993	353	69.4%	102	20.0%	54	10.6%	509
1994	292	66.9%	86	19.7%	59	13.4%	437
1995	253	64.4%	100	25.4%	40	10.2%	393
1996	312	72.5%	80	18.6%	38	8.9%	430
1997	285	69.6%	71	17.4%	53	13.0%	409
1998	233	67.0%	65	18.7%	50	14.3%	348[1]
1999	239	65.8%	65	17.9%	59	16.3%	363[2]
2000	169	64.3%	45	17.1%	49	18.6%	263

[1] One single certification application resulted in the issuance of two individual certifications; thus the total of certifications granted in 1998 amounts to 349.

[2] One single certification application resulted in the issuance of two individual certifications; thus the total of certifications granted in 1999 amounts to 364.

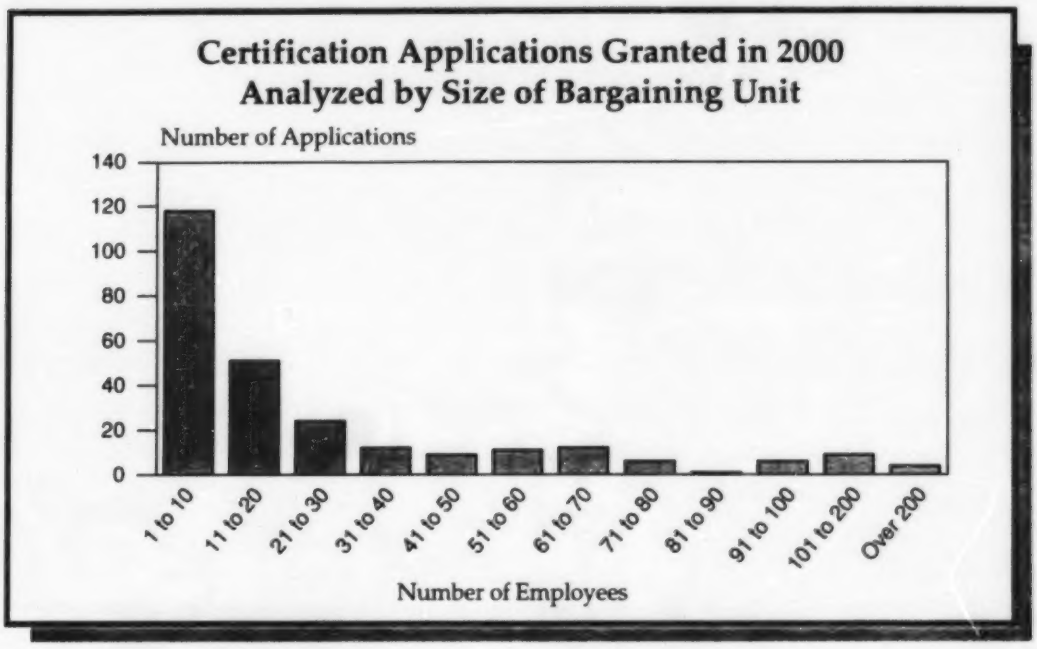

Certification Applications Granted in 2000
Analyzed by Size of Bargaining Unit
Number of Applications
140
120
100
80
60
40
20
0
1 to 10
11 to 20
21 to 30
31 to 40
41 to 50
51 to 60
61 to 70
71 to 80
81 to 90
91 to 100
101 to 200
Over 200
Number of Employees

TABLE 3

Applications to Cancel Certifications Disposed of in 1999-2000

	Number of Applications	
	1999	2000
Filed by Employee(s) —		
Granted	74	87
Dismissed	15	29
Not Proceeded With	26	27
Withdrawn	16	19
TOTAL	**131**	**162**
Filed by Employer —		
Granted	26	13
Withdrawn	4	4
TOTAL	**30**	**17**
Filed by Union —		
Granted	7	15
Dismissed	0	2
Withdrawn	0	1
TOTAL	**7**	**18**
Filed by Employer and Union		
Granted	0	1
TOTAL	**0**	**1**
Filed by Employee(s) and Union		
Granted	0	1
TOTAL	**0**	**1**
Summary —		
Granted	107	117
Dismissed	15	31
Not Proceeded With	26	27
Withdrawn	20	24
TOTAL	**168**	**199**

TABLE 4

Representation Applications Disposed of in 2000 Resulting in a Vote

Type of Application	Number of Applications	Number of Successful Applications	Percentage Successful	Total Number of Eligible Voters
Certification — a vote for or against one union or between two unions applying for the same unit	20[1]	11	55%	1,199
Certification — a vote between an applicant and an incumbent union	4	4	100%	3,344
Expansion of a bargaining unit	1	1	100%	72
Decertification	105	87	83%	2,212
Partial decertification	2	2	100%	8
Cancellation of a voluntarily recognized collective agreement	7	6	86%	82
Successor employer declaration	2	2	100%	50
Successor union declaration	1	0	0%	216
Arising our of unfair labour practice complaint	2	1	50%	18
Appeal of certification	1	1[2]	100%	32
Appeal of expansion of bargaining unit	1	1[2]	100%	16
TOTAL	**146**	**116**	**79%**	**7,249**

[1] Two applications resulted in one vote because two (or more) unions were applying separately for the same unit.
[2] Employer application.

TABLE 5

Reconsiderations Disposed of in 2000

Type of Application being Reconsidered	Leave Denied	Dismissed	Granted	Withdrawn	Total
Unfair labour practice adjudication excluding duty of fair representation	4	2	1	0	7
Duty of fair representation adjudication	33	0	2	0	35
Appeal of Duty of fair representation adjudication	1	0	0	0	1
Certification	2	7	2	1	12
Consolidation of certifications	1	0	1	0	2
Cancellation of certification	3	0	1	0	4
Partial decertification	1	0	0	0	1
Declaration of employer successor status	1	1	1	1	4
Ruling pertaining to alleged illegal strikes, lockouts, picketing, etc.	5	1	2	0	8
Ruling re: replacement workers	0	2	1	1	4
Ruling re: stay of decision	0	0	0	1	1
Ruling re: review of arbitration award	8	1	2	0	11
Ruling re: interpretation of the legislation as it applies to the collective bargaining relationship	3	3	0	0	6
Ruling re: religous exemption	1	0	1	0	2
Ruling re: estoppel argument	0	1	0	0	1
Ruling re: block dispatch list	1	0	0	0	1
Ruling re: community subsector determination (vs. facilities subsector)	0	0	0	1	1
Ruling re: essential service designations	1	0	0	0	1
Ruling re: strike notice	0	0	0	1	1
Ruling re: last offer vote	0	0	1	2	3
Ruling re: interim order	2	0	2	0	4
Ruling re: remedy	1	2	0	0	3
Ruling re: procedure	11	0	2	3	16
TOTAL	**79**	**20**	**19**	**11**	**129**

Appellant	Leave Denied	Dismissed	Granted	Withdrawn	Total
Employer(s)	8	7	6	4	25
Union(s)	24	11	8	6	49
Employee(s)	47	2	5	1	55
TOTAL	**79**	**20**	**19**	**11**	**129**

Reconsiderations Disposed of in 2000
(Type of Application being Reconsidered)

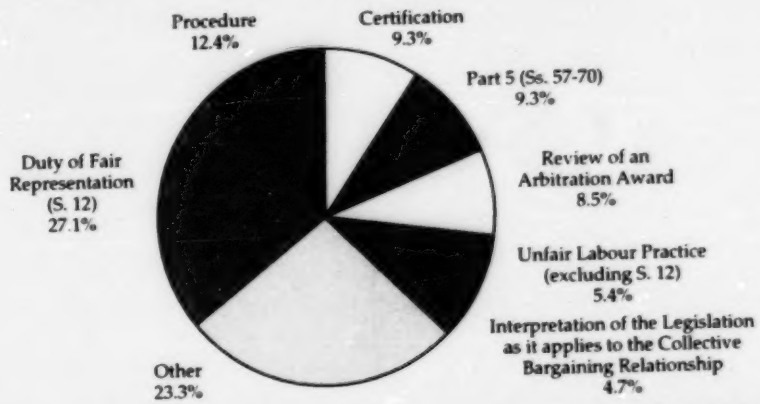
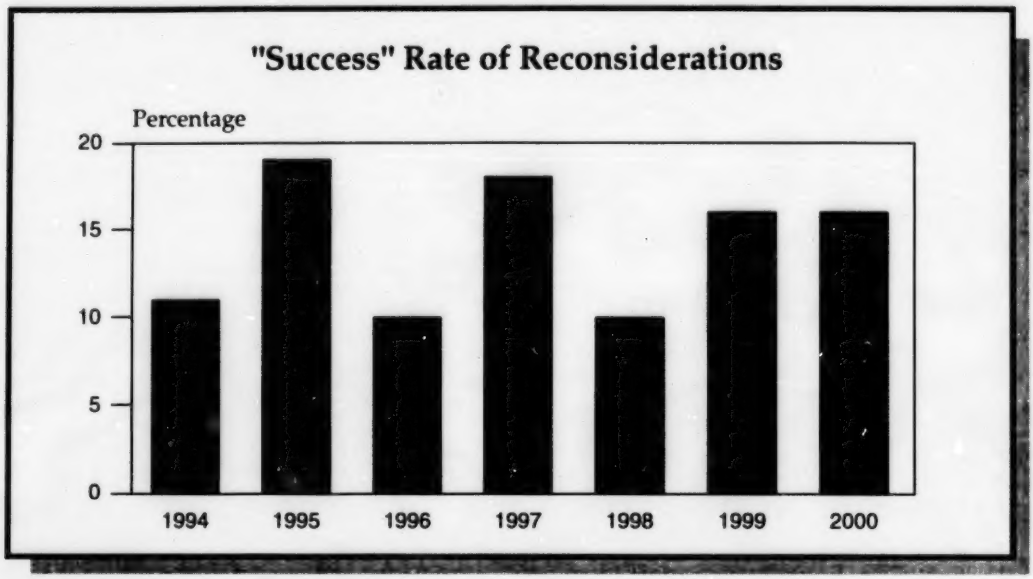


TABLE 6

"Success" Rate of Reconsiderations

	1994	1995	1996	1997	1998	1999	2000
Total Applications Disposed of	143	131	87	113	134	150	129
Number of Applications Withdrawn	24	16	7	21	20	9	11
Number of Applications Processed to a Final Decision	119	115	80	92	114	141	118
Number of Applications Resulting in a Revision of the Original Decision	13	22	8	17	11	22	19
"Success" Rate of Reconsiderations	11%	19%	10%	18%	10%	16%	16%


"Success" Rate of Reconsiderations
Percentage
20
15
10
5
0
1994
1995
1996
1997
1998
1999
2000

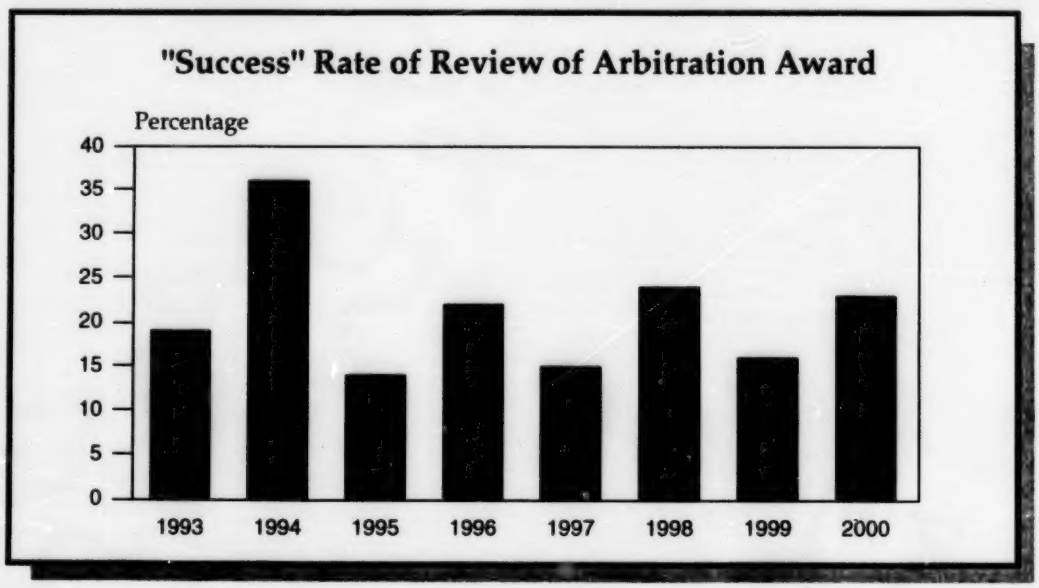

"Success" Rate of Review of Arbitration Award
Percentage
40
35
30
25
20
15
10
5
0
1993
1994
1995
1996
1997
1998
1999
2000

TABLE 7

Applications Pursuant to Part 5 of the *Labour Relations Code* (Strikes, Lockouts, Picketing, etc.) Disposed of in 2000

Type of Application	Number of Applications	At a Formal Hearing	In a Formal Decision
A. Dispute Settled			
1. re: alleged illegal lockout	12	5	
2. re: alleged illegal strike or a challenged strike vote	42	4	
3. re: picketing (employer complaint)	41	3	
4. re: picketing (trade union application for a declaratory opinion)	1	0	
5. re: activity affecting business, etc.	5	0	
Sub-Total	101	12	
B. Dispute disposed of by an adjudication that:			
(a) a violation had occurred or would occur or that a specific activity should be restricted, or			
(b) that certain proposed picketing be allowed			
1. re: alleged illegal lockout	10	10	8
2. re: alleged illegal strike or a challenged strike vote	23	21	15
3. re: picketing (employer complaint)	19	13	8
4. re: picketing (trade union application for a declaratory opinion)	5	5	0
5. re: activity affecting business, etc.	1	1	0
Sub-Total	58	50	31
C. Dispute disposed of:			
(a) by an adjudication that **no** violation had occurred or would occur or that a specific activity should **not** be restricted, or			
(b) by a refusal to rule on the proceedings			
1. re: alleged illegal lockout	5	5	5
2. re: alleged illegal strike or a challenged strike vote	12	9	12
3. re: picketing (employer complaint)	2	2	2
4. re: picketing (trade union application for a declaratory opinion)	5	5	5
Sub-Total	24	21	24
TOTAL	**183**	**83**	**55**

NOTE: The applications in Table 7 include those filed to avert threatened strikes, lockouts and/or picketing (through a declaratory opinion, a jurisdictional decision, etc.) as well as those protesting some form of actual job action.

TABLE 8

2000 Applications and Complaints Analyzed by Applicant

	Filed by Employer(s)	Filed by Union(s)	Filed by Employee(s)	Other	Total[1]
Complaints of Unfair Labour Practices					
Complaints Regarding Internal Union Affairs	0	0	4	0	4
Complaints Regarding Duty to Bargain in Good Faith	8	82	1	0	90
Complaints Regarding Duty of Fair Representation	0	0	199	0	199
Other Unfair Labour Practice Complaints	26	485	18	0	518
Religious Exemption	0	0	12	0	12
Certification Applications	0	376	0	0	376
Certification Variances	77	207	1	0	283
Certification Cancellations	16	17	156	0	188
Cancellation of a Voluntary Recognition	0	0	11	0	11
Permission to Alter Conditions of Employment	5	0	0	0	5
Alleged Unlawful Alteration of Employment Terms and Conditions	0	58	1	0	58
Declaration of Successor Status					
Successor Employer	67	91	1	0	154
Successor Union	0	94	0	0	94
Common Employer	0	30	0	0	30
Accreditation Applications	0	0	0	0	0
Accreditation Variances	50	1	0	0	51
Accreditation Cancellations	0	0	0	0	0
Alleged Failure to Execute or Comply with Collective Agreement	2	15	0	0	17
First Collective Agreement	8	23	0	0	31
Part 5 Applications (Strikes, Lockouts, Picketing, etc.)	132	37	1	0	169
Replacement Workers	0	29	0	0	29
Essential Service Designations	0	0	0	20	20
Last Offer Vote	38	0	0	0	38
Review of Arbitration Award	25	34	10	0	68
Interim Order	10	4	1	0	14
File Order in Supreme Court	43	22	1	1	66
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship	17	67	1	0	83
Reconsideration of a Decision	28	35	53	0	116
Declaratory Opinion (Excluding Declaratory Opinions Pertaining to Part 5 of the Legislation)	3	5	0	1	9
Miscellaneous	52	74	10	5	140
TOTAL	**607**	**1,786**	**481**	**27**	**2,873[1]**

[1] Totals by applicant do not equate with total applications because certain applications were filed jointly, by more than one type of party.

TABLE 9

Analysis of Mediation Officer Appointments

Activity	
Appointments continued from previous year (Section 74)	39
Appointments continued from previous year (Section 55)	5
Appointments made — January 1–December 31, 2000 (Section 74)	202
Appointments made — January 1–December 31, 2000 (Section 55)	31
TOTAL	277
Disposition of Appointments	
Mediated settlement (Secion 74)	194
Mediated settlement (Secion 55)	18
Other (Section 55) – See Table 1 – Footnotes	15
Appointments continuing (Section 74)	47
Appointments continuing (Section 55)	3
TOTAL	277

TABLE 10

Time Required to Process Certain Decisions in 2000

Type of Application	Number of Decisions[1]	Average Number of Days	Median Number of Days
Unfair Labour Practice Complaints Under S. 6 of the *Labour Relations Code* Where a Dismissed Employee is Involved	95	74	34
Complaints Regarding Duty of Fair Representation	111	236	178
Certification	378	50	8
Cancellation of Certification Under Section 33 (2) of the *Labour Relations Code*	135	36	12
Declaration of Successor Employer	142	88	36.5
Common Employer	30	230	127.5
Review of Arbitration Award	69	157	145
Reconsideration of Decision	129	151	88

[1] Excludes applications not proceeded with because applicant did not file sufficient information.

TABLE 11

Officer Assignments in 2000

	TYPE OF APPLICATION			
	Part 5[1]	Unfair Labour Practice[2]	Certification and Expanded Bargaining Unit	Other	Total
Settled/Withdrawn	43	120	0	55	218
Resolved Issues/Assisted at Hearing	0	0	94	0	94
Narrowed Issues/Assisted at Hearing	16	52	63	56	187
To Adjudication (no informal)	8	11	5	3	27
Report of Investigation	0	0	0	15	15
Other	12	9	7	7	35
TOTAL	**79**	**192**	**169**	**136**	**576**

[1] Includes strikes, lockouts, picketing, etc.
[2] Excludes duty of fair representation.

TABLE 12

Requests for Automatic Certification Pursuant to Section 14 (4) (f) of the *Labour Relations Code* (Previously Section 8 (4) (e) of the *Labour Code* and the *Industrial Relations Act*) as a Result of an Alleged Unfair Labour Practice Violation

Year	Requested	Granted
1977	25	1
1978	17	1
1979	25	1
1980	22	0
1981	34	2
1982	15	2
1983	18	0
1984	21	3
1985	16	2
1986	18	2
1987	17	0
1988	10	0
1989	10	0
1990	18	3
1991	20	1
1992	32	6
1993	31	2
1994	31	2
1995	35	0
1996	41	1
1997	52	3
1998	40	0
1999	51	0
2000	21	1
TOTAL	**620**	**33**

Note: Figures for 1977 to 1992 are from the Board's Annual Reports. Figures for 1993 to 1995 were not included in the Annual Reports for these years.

These requests relate to *Other Unfair Labour Practice Complaints* and are not included under Applications for Certification.

APPENDIX OF LEGISLATIVE REFERENCE TABLES

TABLE A

Statutory History of the *Labour Relations Code*

Statute	Date and Manner of Coming Into Force	Sections in Force	B.C. Gazette References
Labour Code Amendment Act, 1982, S.B.C. 1982, c. 59	August 4, 1982 Proclamation		Reg. 354/82, Pt. II, V. 25, p. 564
Regulations Act, S.B.C. 1983, c. 10, s. 21 and 25 and Schedules 2 and 16	October 26, 1983 Regulation	21(2), 29(1)(a), (b), 29(2), 35(c), 42(2), 59(2), 60(c), 61(2), 73(1)(a), 75, 81(5)(a), (6), 142(1), 154 amended	Reg. 393/83, Pt. II, V. 26, p. 607
Labour Code Amendment Act, 1984, R.S.B.C. 1984, c. 24	June 8, 1984 Regulation	1 – 19 except 13	Reg. 167/84, Pt. II, V. 27, p. 221
	August 27, 1984 Regulation	13	Reg. 274/84, Pt. II, V. 27, p. 358
Commercial Arbitration Act, S.B.C. 1986, c. 3, s. 47	July 4, 1986 Regulation	99(4) repealed	Reg. 148/96
Industrial Relations Reform Act, 1987, S.B.C. 1987, c. 24	July 27, 1987 Regulation	The whole *Act* except s. 2(e) and that part of s. 60 that enacts s. 137.97 to s. 137.99	Reg. 246/87
Miscellaneous Statutes Amendment Act (No. 5), 1987, S.B.C. 1987, c. 60, s. 9	December 17, 1987 Royal Assent	26(2) amended	
Budget Measures Implementation Act, 1989, S.B.C. 1989, c. 1, s. 5	Retroactive to April 1, 1988	123.1 amended	
Labour Relations Code, S.B.C. 1992, c. 82	January 18, 1993 Regulation	The whole *Code* except 53, 54, 83, 86, 87, 104, 105.	Reg. 6/93
		Industrial Relations Act, R.S.B.C. 1979, c. 212 repealed except s. 74 – 78, 95 and 96	
Labour Relations Code, S.B.C. 1992, c. 82	May 1, 1993 Regulation	53, 54 of *Code*.	Reg. 6/93
		Industrial Relations Act, R.S.B.C. 1979, c. 212, s. 74 – 78 repealed	

TABLE A

Statutory History of the *Labour Relations Code* — *Continued*

Statute	Date and Manner of Coming Into Force	Sections in Force	B.C. Gazette References
Labour Relations Code, S.B.C. 1992, c. 82	July 15, 1994 Regulation	83, 86, 87, 104, 105 of the *Code*.	Reg. 247/94
		Industrial Relations Act, R.S.B.C. 1979, c. 212, s. 95 and 96 repealed	
Labour Relations Code, S.B.C. 1992, c. 82	July 15, 1994 Regulation	105(10) of *Code* (transitional).	Reg. 248/94
Miscellaneous Statutes Amendment Act (No. 2), 1995, S.B.C. 1995, c. 12, s. 10	June 8, 1995 Royal Assent	105(10) amended	
Employment Standards Act, S.B.C. 1995, c. 38, s. 132	November 1, 1995 Regulation	54(3) amended	Reg. 396/95
Human Rights Amendment Act, 1995, S.B.C. 1995, c. 42, s. 8	October 1, 1996 Regulation	31(b) amended	Reg. 87/96
Statute Revision Act [Section 5(1)]	April 21, 1997 Order in Council	*Labour Relations Code* subsections re-numbered	Reg. 92/97
Miscellaneous Statutes Amendment Act, 1997, S.B.C. 1997, c. 27, s. 24 and 34	Retroactive to May 14, 1997. Royal Assent July 28, 1997.	103 repealed	
Labour Relations Code Amendment Act, 1998, S.B.C. 1998, c. 33	August 1, 1998 Regulation	21(1) amended and Part 4.1 added	Reg. 274/98
Regulatory Streamlining Miscellaneous Statutes Act, 1998, S.B.C. 1998, c. 42, s. 21	July 31, 1998 Regulation	51 amended	Reg. 280/98
Miscellaneous Statutes Amendment Act (No. 3), 1999, S.B.C. 1999, c. 39, s. 38	July 15, 1999 Royal Assent	37(1) amended	

TABLE B

Statutes Referencing the *Labour Relations Code*

Statute	Sections
Access to Abortion Services Act, R.S.B.C. 1996, c. 1	16
Assessment Authority Act, R.S.B.C. 1996, c. 21	14
British Columbia Transit Act, R.S.B.C. 1996, c. 38	7
College and Institute Act, R.S.B.C. 1996, c. 52	1, 43, 45, 48(3), (4), (5), (7)
Correction Act, R.S.B.C. 1996, c. 74	16(2)
Emergency Communications Corporations Act, S.B.C. 1997, c. 47	11(1), (2)
Employment Standards Act, R.S.B.C. 1996, c. 113	1, 22(1)(a), 87(2), 105(3)
Fire and Police Services Collective Bargaining Act, R.S.B.C. 1996, c. 142	1, 2, 3(2), 4(4), 5
Fishing Collective Bargaining Act, R.S.B.C. 1996, c. 150	1, 3, 5(3), 6–12
Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165	Schedule 2
Greater Vancouver Transportation Authority Act, S.B.C. 1998, c. 30	12(2), 13(1), 37(8) & (9)
Health Authorities Act, R.S.B.C. 1996, c. 180	1, 19.2, 19.9(2) & (8), 19.92(2)
Health Authorities Amendment Act, 1997, S.B.C. 1997, c. 23	1, 19.1, 19.2, 19.9(3) & (8), 19.92(2)
Human Rights Code, R.S.B.C. 1996, c. 210	1
Hydro and Power Authority Act, R.S.B.C. 1996, c. 212	32(7)(q)
Hydro and Power Authority Privatization Act, R.S.B.C. 1996, c. 213	15(3), (4)
Institute of Technology Act, R.S.B.C. 1996, c. 225	1, 21
Job Protection Act, R.S.B.C. 1996, c. 240	5(2)
Labour Relations Code, R.S.B.C. 1996, c. 244	Refer to Table A
Labour Relations Code Amendment Act, S.B.C. 1998, c. 33	Refer to Table A
Local Government Statutes Amendment Act, S.B.C. 1998, c. 34	200(1)(b), 203
Local Government Statutes Amendment Act (No. 2), S.B.C. 1997, c. 25	245.1, 779.2
Local Government Statutes Amendment Act, 2000, S.B.C. 2000, c. 7	70
Local Government Act, R.S.B.C. 1996, c. 323	200(1)(b), 203, 738.4(1)
Members' Conflict of Interest Act, R.S.B.C. 1996, c. 287	14(9)
Mines Act, R.S.B.C. 1996, c. 293	1
Miscellaneous Statutes Amendment Act, 1997, S.B.C. 1997, c. 27	24, 34 – Refer to Table A
Miscellaneous Statutes Amendment Act (No. 3), 1999, S.B.C. 1999, c. 39	2, 35, 38 – Refer to Table A
Municipal Act, R.S.B.C. 1996, c. 323	200(1)(b), 203
Pension Benefits Standards Act, R.S.B.C. 1996, c. 352	1(1)
Pension Benefits Standards Amendment Act, 1999, S.B.C. 1999, c. 41	1(2)
Police Act, R.S.B.C. 1996, c. 367	26(3), 35(3), 65(1)(b)
Police Amendment Act, 1997, S.B.C. 1997, c. 37	65(1)
Public Education Collective Agreement Act, S.B.C. 1998, c. 41	2(4)
Public Education Labour Relations Act, R.S.B.C. 1996, c. 382	3(1), 6(2), 7(6), 10(3)
Public Education Support Staff Collective Bargaining Assistance Act, S.B.C. 2000, c. 2	11(2), 12

TABLE B

Statutes Referencing the *Labour Relations Code* — *Continued*

Statute	Sections
Public Sector Employers Act, R.S.B.C. 1996, c. 384	7(3), 10, 11, 12, 13, 14
Public Service Labour Relations Act, R.S.B.C. 1996, c. 388	1, 2(1), 23
Regulatory Streamlining Miscellaneous Statutes Amendment Act, S.B.C. 1998, c. 42	21
Residential Tenancy Act, R.S.B.C. 1996, c. 406	51(3)
School Act, R.S.B.C. 1996, c. 412	20(2), 29, 117(1)(e)
Vancouver Charter, S.B.C. 1953, c. 55	175A
Workers Compensation Act, R.S.B.C. 1996, c. 492	86(7), 93(5), 106
Workers Compensation (Occupational Health and Safety) Amendment Act, 1998, S.B.C. 1998, c. 50	15

TABLE C

Rules and Regulations Under the *Labour Relations Code*

Effective Date	Regulation / Rule	Reference
January 14, 1993	Labour Relations Regulation[1]	Reg. 7/93; O.C. 28/93
January 18, 1993	Labour Relations Board Rules[2]	Ministerial Order MN 4; O.C. and Ministerial Order Resume, Vol. 20, No. 1
February 25, 1993	Labour Relations Regulation (minor amendments)	Reg. 59/93 O.C. 209/93
July 15, 1994	Labour Relations Regulation S. 105 Transitional	Reg. 248/94
August 2, 1994	Labour Relations Board Rules[3]	Ministerial Order M208; O.C. and Ministerial Order Resume, 1994, Vol. 21, No. 26
June 1, 1999	Labour Relations Regulation[4]	Reg. 154/99 O.C. 646/99

[1] Reg. 7/93 established the Regulations passed pursuant to Section 159 of the *Labour Relations Code* and repealed Reg. 147/87 (the former Industrial Relations (Voting) Regulation).

[2] Ministerial Order M4 made the Labour Relations Board Rules and repealed the former Industrial Relations (Practice and Procedure) Regulation, which had been referred to as the Industrial Relations Council Rules.

[3] Ministerial Order M208 approves the Labour Relations Board Rules, 1994, and repeals "any previous Labour Relations Board Rules".

[4] Regulation 154/99 amends Regulation 7/93 by adding Section 3.1 (Membership evidence — additional requirements for construction industry).